

D 37

979.2

D37

THE
DELEGATE FROM UTAH.

*The Position of George Q. Cannon, to whom
the Seat was Awarded.*

REPLY TO A PAMPHLET ISSUED IN BEHALF
OF A. G. CAMPBELL.

SALT LAKE CITY
DESERET NEWS COMPANY, PRINTERS.

1881.

Return this book on or before the
Latest Date stamped below. A
charge is made on all overdue
books.

University of Illinois Library

APR 18 1950

MAY -2 1950

MAY 16 1950

JUN 12 1950

UNIVERSITY OF ILLINOIS

JUL 29 1970

Class

Book

Volume

973.2

D31

1479.234

L161—H41

THE DELEGATE FROM UTAH.

THE POSITION OF GEORGE Q. CANNON, TO
WHOM THE SEAT WAS AWARDED.

A REPLY TO A PAMPHLET ISSUED IN BEHALF
OF A. G. CAMPBELL.

IN THE fall and early winter of 1880 it was rumored and whispered around Salt Lake City, that whatever the result of the count of actual votes cast at the election for delegate, Mr. Allen G. Campbell would be declared elected, and would be foisted, by some mysterious means, into Congress as the delegate representing Utah, although it soon became well known he had received but 1,357 votes, to 18,568 votes cast for Mr. Geo. Q. Cannon.

When events are foretold with accuracy, and immediately we see them take place as foretold, it is but fair to presume that there was some substantial reason for the prophecy. In this case it is apparent by what has since transpired, that long prior to the election of 1880, there was a widely organized conspiracy in Salt Lake to force upon the people of Utah, as their representative and delegate in Congress, a person whom they did not want, would not have, and who received a less vote than any minority candidate that ever aspired to that position from Utah. It mattered little to these conspirators that this result could only be compassed by the grossest frauds and outrages upon the rights of a free people to choose their own delegate. It mattered nothing that the plan could be carried out only by violation of every principle of representative government wherever conducted; that it insulted the theory upon which every political party that has ever governed this country has acted. The end was determined, and the means were within the ready invention of the instigators. Let us recite the steps taken:

RETURN THE BOOK OR OF BEFORE THE

UNIVERSITY OF ILLINOIS
LIBRARY

Class	Book	Volume
979.2	D37	

Ja 09-20M

THE DELEGATE FROM UTAH.

THE POSITION OF GEORGE Q. CANNON, TO
WHOM THE SEAT WAS AWARDED.

A REPLY TO A PAMPHLET ISSUED IN BEHALF
OF A. G. CAMPBELL.

IN THE fall and early winter of 1880 it was rumored and whispered around Salt Lake City, that whatever the result of the count of actual votes cast at the election for delegate, Mr. Allen G. Campbell would be declared elected, and would be foisted, by some mysterious means, into Congress as the delegate representing Utah, although it soon became well known he had received but 1,357 votes, to 18,568 votes cast for Mr. Geo. Q. Cannon.

When events are foretold with accuracy, and immediately we see them take place as foretold, it is but fair to presume that there was some substantial reason for the prophecy. In this case it is apparent by what has since transpired, that long prior to the election of 1880, there was a widely organized conspiracy in Salt Lake to force upon the people of Utah, as their representative and delegate in Congress, a person whom they did not want, would not have, and who received a less vote than any minority candidate that ever aspired to that position from Utah. It mattered little to these conspirators that this result could only be compassed by the grossest frauds and outrages upon the rights of a free people to choose their own delegate. It mattered nothing that the plan could be carried out only by violation of every principle of representative government wherever conducted; that it insulted the theory upon which every political party that has ever governed this country has acted. The end was determined, and the means were within the ready invention of the instigators. Let us recite the steps taken:

979.2
D37

On the twenty-fifth day of September 1880, while the Supreme Court of Utah was in session, a petition of mandamus was presented, nominally on the relation of George R. Maxwell, by Sutherland & McBride, his attorneys, praying that Robert T. Burton, the assessor and registrar of voters for Salt Lake County, strike from the registry lists the names of all women ~~have listed~~.

The object of this proceeding was to annul the woman suffrage law of Utah, as a preparatory step to the future proceedings in the conspiracy.

George R. Maxwell, the relator, was a prominent attorney of the Salt Lake bar, had himself been a contestant in Congress for the office of delegate from Utah, yet he did not appear or argue the cause, but the whole matter was left in the hands of Sutherland & McBride, who, by a strange coincidence, appear now and all through the case as the managers of the cause of Allen G. Campbell. This matter of the appearance of attorneys is one of the little items pointing to the real manipulators of the scheme.

To this petition for mandamus the defendant demurred, and the proceeding failed.

The election came on—a great effort was made to rally votes for Campbell, but the counting of the vote disclosed that he had only received the paltry vote of 1,357 out of a total of about 20,000. Never was a flatter result from the effort made. This vote showed that he had no backing whatever from any substantial party in the Territory of Utah. The republican vote alone was greatly in excess of that amount. The Gentile democratic vote was probably more than Campbell secured.

The next scene in the drama of conspiracy introduces the remarkable document called "Campbell's Protest," printed in the decision of Governor Murray, as a part of it, and found in the Appendix.

The protest says that, calculated by previous elections, there were 40,000 voters in the Territory at the time of election, that the 1,357 for Campbell must be presumed legal, and the 18,568 for Cannon illegal! Why are we to presume 18,000 votes illegal? Any proof of it? Not in the least. It is all presumption, and on such a frivolous presumptions alone Campbell's case rests.

The argument in the protest concedes over 20,000 legal voters, but for the purpose of making his case the draftsman of the protest infers and asks the Governor to presume that all legal voters stayed at home except 1,357, and the other votes were illegal.

To this remarkable protest an answer was filed (also found in the Appendix, and made a part thereof,) more through respect to the office of Governor, than to the merits of the protest.

On the 7th of January, 1881, the Governor went through the form of hearing counsel, or persons appearing as counsel for the respective candidates as if he was a court, and had power to receive evidence, weigh

testimony, and render judgment. That he never had any power to do either, is apparent from the slightest consideration of the nature and duties of his office, and of the Statutes of the United States and of the Territory—a mere ministerial executive officer, having no power to send for witnesses or papers, and who *did* not send for either, and *heard* no evidence, undertook to set aside the order of a court of general jurisdiction, naturalizing a citizen, and at the same time annul the election returns giving a majority of over 17,000. Never was a greater outrage attempted, and never was anything called a “hearing,” a greater farce. That Murray had determined what he would do long before the election, is proven by the prophecies of it by his friends, and the prompt fulfilment by himself.

It is notorious, that in this whole transaction, he has been governed by Sutherland & McBride, whose tool he was, and whose bidding he did.

After the hearing, Governor Murray prepared a remarkable statement—or opinion. By what name it should be called, it is difficult to determine. It was a declaration of the vote, a recital of the protest and answer, with his opinions and conclusions on the questions involved.

Mr. Campbell did not see fit to print it in his pamphlets although it was, without doubt, dictated and written by his counsel and backers. Why did he not print it? Is he ashamed of it? or rather are they—the conspirators ashamed of it? It was recorded at length in the office of the Secretary of the Territory; a copy of it is with the Clerk of the House of Representatives. It is added to the appendix of this article. It states the actual vote each candidate received correctly, and thus truly and really certifies to the election of the person securing the greatest number of votes, and that person was George Q. Cannon. This is the language: “*The returns show George Q. Cannon received 18,565 votes, and Allen G. Campbell received 1,357 votes.*” See appendix. This is over the signature of Governor Murray, and under the Seal of the Territory. No stronger certificate of Cannon’s election could be made.

The Governor then proceeds to decide judicially that Cannon is not a citizen, and therefore he gives what he calls his certificate to Campbell. But the paper he gave Campbell, was anything but the certificate required by Act of Congress. The law says: “The person having the greatest number of votes, shall be declared by the Governor, duly elected, and a certificate shall be given accordingly.”—U. S. Revised Statutes, Sec. 1862.

Governor Murray could not truthfully and did not dare certify that Campbell was the person who received the greatest number of votes cast. He changes the certificate so that instead of “the person who received the greatest number of votes,” it reads “The person *being a citizen of the United States* who received,” etc. A most ingenious device for the Governor sworn to execute the laws of the Territory. Had he made the certificate in the usual form, the gallant Governor would have been subject

to a prosecution for felony. The law of Utah has a statute as follows: "Any person who shall falsely make any return, or [falsely make any certificate of election returns * * * * shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by a fine of one thousand dollars, or be imprisoned in the penitentiary not exceeding two years."—Utah Statutes of 1878, p. 36.

The Governor sent to execute the law, would figure strangely as a criminal for violating them. And yet the intent was to have it believed that he was certifying that Campbell had received the greatest number of votes, while his *cowardice* did not permit him to come within the letter of the law, and so be liable to a criminal prosecution. He would avoid the statute for making false returns, and, at the same time, make it appear to the Clerk of the House of Representatives, and, perhaps the House itself, that he is duly certifying Campbell's election, when in truth, he certifies to nothing material.

The certificate to Campbell, defective as it was, was not sent forth alone; the opinion was added, and thus in effect, there were two certificates, one certifying Cannon secured the greatest number of votes, and the other, that Campbell was the person *being a citizen* of the United States, who received the greatest number, both signed by the Governor, both sealed with the Territorial Seal. Both certificates were presented to Adams, Clerk of the House of Representatives. He was forced to discriminate and decide upon which to act. It was his duty to prepare the enrollment for the next House. He could put but one name from Utah. Evidence that Cannon was a citizen was produced before him, and Murray's certificate that he received the greatest number of votes. It was apparent there was but one true course in deciding upon the two certificates, and that was to award the seat to Cannon who had been elected, and who held the certificate, and was entitled to his seat, which Clerk Adams did, and Cannon now occupies and holds the position.

Great was the indignation of the conspirators when they learned that their petty device had not succeeded in deceiving the Clerk, and robbing a great Territory of its sole representation.

At page 3, of Campbell's pamphlet, he complains that "Cannon made application without any notice to Campbell to have his name placed on the roll, and secretly, after an *ex parte* hearing, the Clerk enrolled Cannon as delegate." It is not true that it was without notice or secretly done.

In Cannon's notice of contest, he distinctly, in most explicit language, gave Campbell notice that he would contest his right to be enrolled. Mark the language (Appendix): "I have the honor to notify you that I shall contest your right * * * either to be sworn or ENROLLED, or hold a certificate as such delegate."

With what truth does Campbell say he had no notice, when here is the

most formal one, in the most formal document connected with the contest? That notice is dated January 20, '81, and was served, and Campbell's answer put in, long before the action of Mr. Adams. Where and when could Mr. Cannon contest the right of Mr. Campbell to be "*enrolled*," except at the time of the enrollment, before the enrolling officer—the Clerk?

Neither is it true that the Clerk acted secretly—there is no pretence that either Campbell, or his attorney, or any one for him, either sought to be present, or applied to the Clerk to know when he could hear them or where, or indicated their intention to appear. The only claim in Campbell's circular is that on the tenth day of February, McBride and Willets (M. C. from Michigan), went to the Clerk, and the certificate was given him. Afterwards, at some indefinite time not stated, Campbell asked Adams if he was going to put his name on the roll. Adams said if he (Campbell) "had a certificate, his name would appear on the roll." Manifestly this conversation was before Adams had examined any certificates, or knew the nature of the contest before him. When Adams examined the certificates, and found that Campbell's was insufficient, and that it appeared by the certificate of the Governor that Cannon had been elected, then the case was changed, and the seat was awarded to the person elected.

The duty of the Clerk is stated in Sec. 31, Revised Statutes, as follows:

"SEC. 31.—Before the first meeting of each Congress the Clerk of the next preceding House of Representatives shall make a roll of the Representatives-elect, and place thereon the names of those persons, and of such persons only, whose credentials show that they were regularly elected in accordance with the laws of their States respectively, or the laws of the United States."

The documents that Murray had prepared clearly stated that Cannon was the *person* "regularly elected," and that Campbell was not elected. It is not true that Cannon was awarded a secret hearing; in truth he had no hearing before Adams at all, but appeared and submitted the certificate which stated he received the greatest number of votes, and the Clerk refused to hear him in any argument, because the other party had not seen fit to appear.

What is the effect of Adams' action? The seat has been awarded to Cannon by reason of Murray's certificate. Campbell knew well the statements in and form of those papers. He filed no notice of contest. The law of Congress says (Revised Statutes, Sec. 105): "Whenever any person intends to contest an election of any member of the House of Representatives of the United States, he shall, within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the member whose seat he designs to contest, of his intention to contest

the same, and, in such notice, shall specify [particularly the grounds upon which he relies in the contest.”

Campbell knew, within thirty days, that Cannon was elected; he knew that Murray had decided and filed his decision that Cannon received 18,568 votes to 1,357 for Campbell; and yet he permits the thirty days to pass by and files no notice of contest. He has failed to file any even now, at the meeting of Congress. By the act of Congress he is barred and prohibited from making any contest, or questioning the election of Cannon. Cannon, then, is the Delegate from Utah, unquestioned and uncontested.

Nor will it aid Campbell's case that Cannon did file a notice of contest. As Murray had, in effect, given two certificates, and the thirty days would expire before any enrollment could be made, and what action might be taken between conflicting certificates could not be foreseen, Cannon took the precaution to contest the declaration that Campbell had been elected. He has succeeded in the first part of the notice—the enrollment—and the further prosecution of the contest is immaterial.

The citizenship of Cannon is denied in the circular of Campbell and in the canvass of Murray. This question is not new. Mr. Cannon was elected to the Forty-fourth Congress, R. N. Baskin was the rival candidate, received a large vote, and contested the seat. All the testimony now produced and sworn to was then laid before the committee of Congress. Jabez G. Sutherland, now of the counsel for Campbell, then took testimony as counsel for Cannon. The committee was composed of an unusually able array of lawyers.

Mr. Baskin was, himself, an able and prominent lawyer; he appeared personally before the committee, and made an elaborate and thorough argument reviewing the whole case. The committee carefully examined and considered the case, decided and reported that Cannon was a citizen, and entitled to be a member of the House. This would seem to be an effectual and final disposition of the whole matter. But Campbell's circular again reviews and imitates the arguments of Mr. Baskin.

Cannon came to the United States before he was eighteen, and remained until after he was twenty-one; afterwards, he went on a mission for the “Mormon” church, and immediately after his return in 1854—sixteen years after he first came to this country, he was naturalized. These facts were stated to the United States District Court, as one of the witnesses still living narrates. (See testimony of Elias Smith.) That court decided that Cannon was entitled to be naturalized. The decision was correct. Where had been Cannon's *home* all these years? The object of his absence—to make converts to the “Mormon” Church at Salt Lake; the place he went to—the Sandwich Islands; the ties that bound him to Salt Lake, all prove beyond question, that he considered the latter place his home, and intended to make it such. That after he had once actually removed and

lived here, his home could be established here has been abundantly decided. The authorities were so fully reviewed on this branch of the subject by Chas. A. Eldredge, in his brief before the committee of the Forty-fourth Congress, that we take the liberty to use his language, as follows:

"It is a fact of history and tradition of that people, known to all who know anything of them, that every intelligent man amongst them is a minister of their religion, under its canons liable to be and is at some time sent abroad as missionary and agent, to recruit for their church and population. This has been at all times the great source of wealth, growth, and extension of that prosperous, peculiar, and wonderful people. This missionary agency has been really a part of their system, and continues to be even to this day. It was in this work Mr. Cannon was engaged, and through his and his fellow-missionaries' influence and labor a large number were induced to leave the Sandwich Islands and settle in Utah. His labor was to get followers of his faith and doctrine to make their homes in that Territory—not to make a home for himself in the Sandwich Islands. It will indeed be a matter of news to him and his people, if not a surprise, that whoever goes out on this duty loses his own home and residence among his own people; that in recruiting for settlers and citizens he throws off his own citizenship, and becomes himself a stranger and alien in his own land. Such a doctrine is no less strange than horrible; that in the act of going out to persuade others to join them and make their homes and residences with them, he who goes expatriates himself and abandons his own country and home. But we will not pursue this subject further. The law is not so unreasonable and absurd. The court, in adjudging the naturalization to Mr. Cannon, rightfully held otherwise. Residence once made and acquired, is not abandoned without *intention of abandonment*. It remains till another is *intentionally acquired*. *Residence* is the term used in the naturalization laws, and it was *residence* which the court adjudicated in the granting naturalization to Mr. Cannon.

"The court gave to the term *resided* its ordinary and accepted meaning. To reside in a particular place one or five years does not necessarily require the person to remain fixed and stationery in the locality during all the period of time. Having *established the residence*, he may go and come at his pleasure, and the place remain his residence. This has been determined legislatively as well as judicially. The naturalization act of 1802 required *residence in the United States* for the '*continued term of five years next preceding his admission*.' This act was construed by the courts and the term given its common and ordinary definition and meaning. In 1813, Congress thought wise to *confine the applicant within the United States all the time during the entire five years*. On the 3d of March of that year, an act was passed amending the previous law by adding to it

'Without being at any time during the five years out of the territory of the United States.' This amendment was given by the courts the most narrow and strict construction. One court in the State of New York⁷ held that a person who, during the five years, while traveling on a steamboat which touched at a Canadian port, went out upon the dock for *only a few minutes*, was not entitled to naturalization. This act, thus construed, was looked upon as illiberal and unwise, calculated to hinder and deter emigration, and Congress, by an act approved June 26, 1848, amended the law by repealing the words, '*Without being at any time during the said five years out of the territory of the United States.*' Thus it now stands, leaving the term *residence* and its meaning and effect to be determined according to its ordinary acceptance by the courts administering the law. The legislative construction would seem to be clear that the law does not, and that it was not the intention to confine the person contemplating naturalization during the five years to the territory of the United States. He is only to be a *resident thereof*.

"We do not suppose it is questioned or doubted that Mr. Cannon actually *acquired* a residence in the United States and the Territory of Utah, within the meaning of the *naturalization laws*, previous to his being sent a missionary to the Sandwich Islands. He had been in Nauvoo, Illinois, and Salt Lake seven or eight years, and left his family at the latter place when he went upon his mission. The place was, therefore, and remained his residence, unless he abandoned it for another. There is no pretence that he went or intended to go to any other place than the Sandwich Islands. The place of residence once acquired remains in law and in fact his residence till another is selected. The only question then which the court had to adjudicate on the application for naturalization was whether, when he went from Salt Lake to the Sandwich Islands, he became a resident there; whether he gave up Utah and took up his residence where he went. Upon this all the authorities agree, and as far as I have been able to examine, without an exception, that it depends upon the intention with which he left Utah and took up his abode in the Sandwich Islands. Within the meaning of the naturalization laws, there is little difference between residence and domicile; both depend upon and are determined by the *intention*. It may be that a residence may be had in a place where the party has no domicile, but *the intention is the controlling consideration* in the establishment of either.

"McCrary's Election Law, p. 35 §. 39 to 41.

Story in his work on Conflict of Laws⁸ § 43, page 39, commenting on Vattel's definition of domicile, wherein he defined it to be '*a fixed residence in any place, with intention of always staying there,*' says: '*This is not an accurate statement. That place is properly the domicile of a person in which his habitation is fixed, without any present intention of removing*

therefrom. Story further remarks: 'The definition of the word *domicil* is, however, not without difficulty, and in a late case it was observed by Dr. Lushington that, although so many powerful minds had been applied to this question, there is no universally-agreed definition of the term; no agreed enumeration of the ingredients which constitute domicil; the gradation from residence to domicil consists both of *circumstances and intention.*' And at § 44, page 40: 'Two things must concur to constitute domicil; first, *residence*; and, secondly, *intention* of making it the home of the party. *There must be the fact and the intent.* * * * However, actual residence is not indispensable to retain a domicil after it is once acquired; but it is retained *animo solo* by the mere intention not to change it or to adopt another.'

"If, therefore, a person leaves his home for temporary purposes, but with an intention to return to it, this change of place is not in law a change of domicil.'

"Phillimore, in his *Law of Domicil*, p. 71, says: 'There must be both *animus et factum*; this is the result of all the cases. That a domicil once acquired remains until another is acquired, or that acquired first abandoned. I admit all that has been said, that *length of time is not important*; one day will be sufficient, provided the *animus* exists; if a person goes from one country to another with intention of remaining, that is sufficient; whatever time he may have lived there is not enough unless there be an *intention of remaining.*' Again, at page 98: 'It may be taken as a general maxim of European and American law, that every person *sui juris* is at liberty to choose his domicil, and to change it according to his inclination.' Again, Phillimore, p. 146, speaking of American dicta, says: 'In questions on this subject, the *chief point* to be considered is the *animus manendi*, and courts are to devise such reasonable rules of evidence as may establish *the fact of intention.* If it appear that the intention of removing was to make a permanent settlement, or for an indefinite time, the right of domicil is acquired by a residence of a few days.' Every man is viewed by the law of nations as a member of the society in which he is found. Residence is *prima facie* evidence of national character; susceptible, however, at all times of explanation. If it be for a *special purpose*, and transient in its nature, *it shall not destroy the original or prior national character*; but if it be taken up *animus manendi*, then it becomes a domicil, superadding to the original or prior character the rights and privileges as well as the disabilities and penalties of a citizen or subject of the country in which the residence is established.'

"Again, page 148: 'It has been said by some civilians that when the person retained the intention of returning to his former domicil, *a thousand years would not suffice to establish a new one.*'

"Page 149: 'No particular time is required; but when the two circum-

stances of actual residence and intentional residence concur, then it is that a change of domicile is effected.'

"It is seen, therefore, that removal from one place to another merely does not make the latter place the residence; nor the intention to remove and remain there does not constitute it the residence. Both must concur. Neither can create the residence without the other.

"Mr. Story, in his work on Conflict of Laws, § 44, says: 'However, in many cases, actual residence is not indispensable to retain a domicile, after it is once acquired; but it is retained, *animo solo*, by the mere intention not to change it or adopt another. If, therefore, a person leaves his home for temporary purposes, but with an intention to return to it, this change of place is not in law a change of domicile. Thus, if a person should go on a voyage to sea, or to a foreign country, for health or for pleasure, or for business of a temporary nature, with an intention to return, such transitory residence would not constitute a *new domicile*, or amount to an abandonment of the old one; for it is not the mere act of inhabitation in a place which makes it the domicile, but it is the fact coupled with the intention of remaining *animo manendi*.'

"Mr. Secretary Marcy, in his letter in Koszta's case, says: 'The authorities already referred to show that to lose a domicile when once obtained the domiciled person must leave the country of his residence with the intention to abandon that residence, and must acquire a domicile in another.'

"Gardner's Institutes, page 454.

"It seems to us, admitting every fact that may be contended for, the court, upon the authorities already cited, could not have decided otherwise than that Mr. Cannon had resided in the United States and in Utah as recited in his certificate of naturalization. Every fact now appearing tends to that conclusion. Mr. Cannon was, while in the Sandwich Islands, a mere *sojourner*. His calling and pursuit were temporary—he neither gained nor sought a residence there. He returned as soon as his calling ended. Every presumption upon the facts is against his having abandoned his residence in Utah to permanently cast his lot in with the barbarian inhabitants of those Islands. The courts have always held the presumption strongly against the intention of domicile in such cases, with such peoples.

"Lord Stowell was inclined to the opinion that a Christian would not acquire a domicile in a Mahometan country. His language was: 'I give no opinion whether a British subject can or cannot acquire a Turkish domicile; but this I must say, *I think every presumption is against the intention of a British Christian subject voluntarily becoming domiciled in the dominion of the Porte*.'

"Phillimore, page 157.

"It would, it seems to us, require very strong circumstantial proof to satisfy any court that a man of Mr. Cannon's intelligence, cultivation and learning, intended, in the very morning of his life, at the age of twenty-two years, to abandon the beautiful and picturesque valley of Salt Lake, the home of his young manhood and early adoption of himself and family, and all the bright prospects that were opening up before his young ambitions of becoming a leading man among his people, for a home, residence, society and life with the ignorant, debased and heathen natives of the Sandwich Islands.

"Love of adventure, Christian faith and duty may be supposed to lead men of education and cultivated taste to sacrifice every other pleasure and for a time devote themselves to religious labor in such fields, but it would be a great tax upon our credulity to believe men of sound mind would do it for all time."

The action of the Court admitting Cannon, is attested by two documents: 1. It is found in a book in the office of the Supreme Court of Utah, originally a book of blanks, but at the page in question, filled up in the handwriting of and signed by one W. I. Appleby, who was then clerk both of the District and Supreme Court. The fact that the clerk was clerk of both courts explains how the book came to be among the Supreme Court records; it would be an easy and natural occurrence, when the office came to be divided and a different clerk provided for each court, for the books, which theretofore had been kept by one man, to become confused and get into the wrong office, especially as the Supreme Court sometimes admitted persons to citizenship, and the records of such admission were in the same book with the records of the District Court, the clerk of both courts not thinking it unnecessary to keep separate books for each.

The fact that this naturalization does not appear on the journal, but in a separate book, is explained by the order (Exhibit "B"), directing the Marshal to procure "a book with blanks printed for recording declarations and naturalizations for the use of the court." This order was made January 18, 1854, and the blank book was purchased in 1851, and therefore, Campbell's pamphlet says this could not have been the book ordered. Why not? Could it not be possible and is it not probable that the clerk originally obtained this book for convenience merely; that for the purpose of making a legal record, the above order was made? The making the order constituted it a record of the Court. The order was made months before the naturalization of Cannon. But Campbell's article argues that this cannot be a record belonging to the office, because it is only certified by the clerk who kept it. Who else should authenticate it? Is it the business of the judge to write his name on the flyleaf to authenticate a record? No one heretofore ever heard of such a duty; neither is this the work of a "subordinate" as suggested by Campbell's pamphlet, p.

7. The clerk of the court is not a "subordinate," he is a distinctive branch and officer of the "court;" it is part of his duty and office to keep the records of the court; to procure and designate the various books and journals in which the proceedings of the court are recorded. This order from the court, directing a book to be prepared for naturalizations dispensed with the necessity of the presiding judge signing each day's proceedings. If the clerk signed the proceedings, it was sufficient. No question is made as to the signature of the clerk. It is proven to be his own handwriting. He died long since, and could not have prepared this book for this occasion. On this subject we call the attention of the language of Judge Blatchford, *In Re Coleman*, 15 Blatchford 428:

"It is urged, by the attorney for the United States, that there is nothing to show that the book labelled on the back 'Naturalization Index,' and found in the office of the clerk of the Superior Court, was ever regarded by that court as a record, or that that court even knew of its existence; that it is as much a private, unofficial book as the note paper in the clerk's desk is private, unofficial paper; that there is nothing to show when the entries in it were made, nor by whom they were made; that, for all that appears to the contrary, they were made up from the affidavits alone, some time after the time when the affidavits purport to have been made; that it does not appear that the book was kept even by the authority or direction of the clerk of the court; and that it may have been made up by, and have been the property of, some deputy who used it as an aid in making searches. There is no evidence tending to show that what is thus conjectured has any foundation in fact. It was open to the United States to show, that the 'Naturalization Index' was not regarded by the Superior Court as a record, or that its existence was unknown to the court, or that it was a private, unofficial book, or that the book was not kept by the authority or direction of the clerk of the court, or that it was the property of some deputy. The record in the present case contains a certificate signed by the present clerk of the Superior Court, and attested by the seal of that Court, certifying that the copy, before set forth, of the entry in regard to Coleman, in such 'Naturalization Index,' 'is a true extract from the record of naturalizations of this court, remaining in my office, to date,' which date is November 22d, 1878. When a certificate of the clerk of a court, under its seal, certifying that a book is a 'record of naturalizations' of the court, is presented and accepted as evidence of the existence in the book, of the original entry of which a copy is annexed to the certificate, and no evidence is produced that the signature of the clerk is forged, or that the seal is not an impression from the true seal, or that the book has no existence, or that the entry is not in it, and when it appears that the book is in the office of the clerk of the court, and has on it and in it marks designating it as the property of the court, and as containing transactions of the court, and the entry in ques-

tion in it corresponds with the contents of papers on file in the office of the clerk of the court, which papers purport to be genuine, and the genuineness of which is not impeached, and which purport to have been filed on the day when the particular transaction took place, it is a proper legal conclusion, that the court regarded the book as one of its records, and knew of its existence, and that it is not a private, unofficial book, and that it was kept by the authority and direction of the court and of its clerk, and that it was not the property of some deputy. So, too, it is a proper legal conclusion, on the same evidence, that the entry in the book was made at a proper time and by proper authority."

2. Cannon has other and higher evidence of the action of court admitting him to be a citizen than this book; he has the certificate of naturalization itself, under the seal of the court, in the handwriting of the clerk. (See depositions of Snow, Cummings, Smith and Exhibit Z.) No attempt is made to show that this certificate is not under the genuine seal of the court, in the genuine handwriting of the clerk, and duly issued to Cannon. This alone is complete proof of citizenship. If the clerk and judge, or all the officers of court failed to do their duty in recording, or entirely failed to record naturalizations of citizenship, it would not deprive a single person to whom the privilege of citizenship had been given of the rights acquired thereby.

Congress, by a general law, has granted the gift of citizenship to all foreigners who will comply with the terms of the grant; the court simply can determine whether the applicant fills the measure; when the court has heard the evidence, decided the fact, and pronounced the judgment declaring the applicant a citizen; no power short of revolution can deprive him of that franchise, or take from him any of the rights and privileges of any other citizen of the United States. If the judge or clerk fail to make any sign or mark whatever, the man is still a citizen. He has complied with the conditions of the gift on his part, and it is the fault of others if the records of his rights are incomplete. On the subject Judge Blatchford says:

"It is hardly to be supposed that Congress intended to make the applicant for citizenship responsible for a non-compliance with any other conditions than such as he had the power to comply with. The applicant can declare his intention, and can take the prescribed oath and make the renunciation. But he cannot see to it that the proceedings and renunciation are recorded. He can produce a witness to his residence and character, and can appear in person in the proper court, and be sworn there in open court, with his witness, as to the matters prescribed in the statute. When this is done, he can do nothing more except to receive such a certificate from the court as that which Coleman received from the court—a certificate which sets forth that it is given 'by the court,' under its seal; that Coleman appeared in court on a day named, and applied to it to become a

citizen, and produced to it such evidence, and made such declaration and renunciation, and took such oaths, as are required by the acts of Congress on the subject; and that, thereupon, the court ordered that he be admitted, and he was accordingly admitted, by the court, to be a citizen of the United States. When he has done what the certificate says he has done, and when he leaves with the clerk of the court such papers as he has signed, and when the court tells him, as it does by the certificate, that, he having done all that, the court had thereupon ordered that he be admitted to be a citizen, and had admitted him to be a citizen, and when the court gives the certificate into his keeping, he has done all he can to comply with the statute. It cannot be held that the word 'conditions' applies to anything further. There must, undoubtedly, be an act of admission, but what shall be the evidence, directed by the court, of such act of admission, is another question. The provision for recording 'proceedings,' at the close of the second condition, and the provision for recording the renunciation mentioned in the fourth condition, are introduced in such form that they may very well be regarded as merely directory, and as no part of the 'conditions.' The conditions are well satisfied by limiting them to what the applicant is required to do, in the first, second and fourth paragraphs, and to what the court is required to do, in the third paragraph. The admission to citizenship is to follow the observance of those conditions. The recording is to follow the admission and not precede it. The admission separates the conditions from the recording."

By the law of this decision and the law of common sense, Cannon having been declared a citizen by the court, stood a citizen, and no record or want of record, could change his status or his rights or take from him any of the privileges or consequences which follow citizenship. But we are challenged as to the kind of evidence necessary to show the act of admission. If no record, whatever, has been kept, as Campbell's pamphlet affirms, parol evidence may always be resorted to either to establish the record proceedings, or for the purpose of making a new entry of the record.

Rhoads v. Commonwealth, 15 Penn. St., 272.

Ruggs v. Parker, 7 Gray, 172.

Matheson v. Gant, 2 How., U. S., 263.

Frink v. Frink, 43 N. H., 508.

We have, in addition to the record, the testimony of the only living witness outside of Cannon himself, the venerable Elias Smith, Probate Judge of Salt Lake County, respected by Gentile, Jew, and "Mormon" alike; he swears to the actual fact of the oath, the examination, the admission. He is contradicted by no one, and no effort is made to dispute the effect of testimony. As to the effect of the certificate, Judge Blatchford in the case above cited uses this language:

"As said before, there must be an act of admission by the court. But the court has a right to say what it will regard as its act of admission, and it has a right to say what it will regard as its order that the applicant be admitted, and what it will regard as his admission. Whatever the court says is its act of admission, and whatever the court says is its order of admission, is such act and such order, whenever the question is brought up in a collateral proceeding, such as is the present proceeding, provided there is sufficient to reasonably amount to such act and such order. Here, the Superior Court has said to Coleman, by the certificate, that he has complied with all the requirements of the statute, and that it has made an order thereupon that he be admitted to be a citizen."

Judge Freedman decided that in such case, the certificate was all the evidence needed.

In Re Christian, 56 How., P. R.

What pretence does Campbell set forth for attacking or doubting the facts by which Cannon's citizenship is proven?

1. He says that at some other time in some other contest (which, by the way, was the contest by Baskin in the Forty-fourth Congress, where the committee decided in favor of Cannon's citizenship), a man by the name of Jarman testified that he (himself), had a fraudulent certificate of naturalization. What of it? Because one man is a rascal, are all men villains? Does it follow that because Jarman was not legally naturalized that there were no honest men in the United States or in Utah? By the logic of Campbell's attorney: because Guiteau killed Garfield, every man in the United States killed him, and Cannon or Campbell could be convicted of that crime, at the pleasure of the logician; and it is upon such reasoning that the whole cause of Mr. Campbell depends. And this deposition of Jarman is the only fraudulent certificate that even counsel can remember in the whole history of Utah. I say this because it is the only instance he can cite, and for that, he goes outside of the case and introduces this testimony which he could not duplicate in this case. Not only was this testimony not taken in this case, but it does not even refer to the doings of the same clerk. Cannon's certificate was signed by Appleby; when Jarman was naturalized, fourteen years later, Lynch was clerk and issued the certificate. No one in 1881 could be found to testify to any fraudulent certificate.

2. We find in Campbell's apology, an ingenious piece of hypercriticism on the wording of the certificate—we are gravely assured that when it is recited that a man has sworn "to renounce," he does not renounce, but merely promises to do so in the future. Such puerilities may amuse the mind of the proverbially "cunning" counsel of Campbell, but they cannot enlighten honest men who are seeking to find and determine the rights of persons who have applied to be citizens, conformed to all the conditions, and

taken the oath the clerk of the court administered to them. The recitals in any document, certificate or judgment, do not constitute any essential or inherent part of its validity.

In Re McCoupin, 5 Sawyer, 631.

Judge Field, of the Supreme Court of the United States, uses this language:

"The record of naturalization in his case is perfect, and the judgment valid. Its validity and efficiency, are in no respect impaired by the inaccurate statement in the recitals respecting the three years residence in the United States of the applicant previous to his attaining the age of twenty-one. The recitals constitute no part of the judgment, and whether correct or otherwise, is immaterial. The court was satisfied at the time of the sufficiency of the evidence presented to justify the admission of the applicant, and pronounced its judgment accordingly."

At page 15 of the argument for Campbell, his advocate makes a summary of the points against Cannon's citizenship. Each one of these is untrue in fact, and we use the same summary, the same order, and the same points exactly reversed.

1. There is a "*Record*" of the court preserved in two forms. (a.) On the books, as ordered by the court. (b.) In the certificate duly signed, sealed, and delivered to Cannon.

2. Parol proof is always allowable to establish a judgment whenever it has been irregularly or defectively recorded, or its jurisdiction has been denied.

Freeman on Judgments, 273, and cases cited *supra*.

3. There was no fraud in the action of the court admitting Cannon to citizenship. No witness has attempted to impeach the integrity or standing of the judge who presided over the court. Cannon was entitled to be made a citizen. His home being here, he had the right to go abroad for the purpose of attending to business, and yet keep his home in the United States.

4. Campbell says: "Accept every fact in Cannon's certificate as true." He certainly has disputed none of them; every fact is true, but the one all important fact is the decision of the court, which no other court, tribunal, or body of men can ever set aside, or impeach collaterally, "AND THEREUPON THE COURT * * * ADMITTED HIM TO BE A CITIZEN;" that flat went forth in 1854, and no power in the United States can ever change, reverse or alter its effect.

Campbell's advocate attempts, by a logic peculiar to himself, to show that the woman suffrage act of Utah elected Campbell and defeated Cannon. He claims that, illegal votes being cast, the good not being distinguishable from the bad, the whole vote for Cannon must be thrown out, and the vote for Campbell preserved! Why not throw out the vote for

Campbell also? In the Beaver contest, which he cites as authority, it appears by his showing that the vote for both sides was excluded quite:

"The Mormon returning officers held that those illegal votes vitiated the *entire* poll."

Argument for Campbell, p. 20.

If the "entire poll" of votes in Utah is vitiated, what becomes of Campbell, his 1,357 votes, and his seat? Does Campbell pretend, in either notice, protest, answer or testimony, that no females voted for him? Not a word of it. He asks Congress or the public to imagine and presume that no females voted for him. The fact is notorious that he received a large percentage of female votes. Day after day, before the election, the newspaper of the conspirators, acting in his interest—the Salt Lake Tribune—called on the women of Utah to vote for Allen G. Campbell as their "champion." In what regard he was their champion is not shown, but is perhaps hinted in the cross-examination of one of their witnesses. Many women did vote for him, and he has not dared to prove or attempt to prove that any women voted for Cannon; although in his "answer" he alleged and gave notice that he would prove that votes were cast for Cannon by females. He could spread on paper the braggart trumpet of what he would do, and yet no testimony could he bring to back his boast. The burden was on him. Why did he not prove it? We can answer. He knew too well that Cannon could prove that a greater per cent. of votes by females was cast for Campbell than for Cannon. He could make the charge but dared not face the facts.

The question of the validity of the Woman Suffrage Act does not properly belong to this discussion, as it has no direct bearing on the case, not having been tested judicially. But so many falsehoods have been told concerning the tenor and effect of the law that we will briefly consider it. The Campbell pamphlet claims (p. 21) that this act requires neither citizenship, residence nor majority. But the act clearly provides that every woman, in order to be qualified to vote, must be, first, of the age of twenty-one years; second, have resided in the Territory six months next preceding the election; third, be either born or naturalized in the United States, or the wife, widow or daughter of a citizen. This is as plain as language can make it. It follows, therefore, that a woman under twenty-one years of age cannot vote in the Territory even if she possesses the other requisite qualifications; also that a woman who is of the age of twenty-one years and possesses the third qualification, cannot vote unless she has resided in the Territory six months next preceding the election.

The principle involved in the provision concerning the wife, widow or daughter of a citizen is that contained in the statutes of the United States, which makes citizens of the children of citizens, and also of the wives and

widows of citizens without going through the same forms as male aliens in obtaining naturalization papers.

The Registration Act of 1878 provides that all citizens must be registered before they can vote, and both male and female voters are required to take a certain oath, which is in form as follows:

"I,———, being duly sworn, depose and say, that I am over twenty-one years of age and have resided in the Territory of Utah for six months and in the precinct of —— one month next preceding the date hereof, and (if a male) am a 'native born' or 'naturalized' (as the case may be) citizen of the United States, and a taxpayer in this Territory; (or if a female) I am 'native born' or 'naturalized,' or the 'wife,' 'widow,' or 'daughter' (as the case may be) of a native born or naturalized citizen of the United States.

"Subscribed and sworn to before me this —— day of —— A. D. 18—.

Assessor."

All female citizens as well as males must, in order to vote, swear first, that they are over twenty-one years of age; second, that they have resided in the Territory six months and in the precinct one month next preceding the date of registration; and, third, that they are native born or naturalized citizens—in the case of females they may be either native born or naturalized, or the wife, widow or daughter of a native born or naturalized citizen. Observe, each women voter must swear, not only that she is a citizen, or the wife, widow or daughter of a citizen, but that she is over twenty-one years of age, and that she has resided six months in the Territory, and one month in the precinct immediately before the time of the taking of the oath.

Campbell boasts that he "represents the free people of Utah," who "are bringing schools and civilization into this priest-ridden and crime-stained Territory." Are the schools they bring represented in the logic of Campbell's advocate or apologist? Logic that says that because votes were cast by females they are all presumed to be such, and all cast for Cannon; that declares, because one certificate is illegal, all are illegal; that because an illegal election was held for sheriff in Beaver County, Utah, there can be no legal elections in America?

"Free people" does he call the voters for Campbell? Is it "free" to conspire to thrust into Congress one who has not been elected? Is it "free" to rob or try to rob 18,568 people of their suffrage and give it to 1,357? It is entirely too "free" for constitutional, law-abiding governments. Is it "civilization" for the Governor to certify that Campbell was elected when he knew he was not? The less the better of such civilization. Freedom to rob and despoil others of their rights! Freedom to falsify election returns, and avoid prosecution by technical subterfuges, is a kind of freedom not submitted to by the people of the United States.

On the 8th day of June, 1881, a complaint in the nature of a bill in equity was filed in the District Court at Salt Lake, entitled the United States, *Ex rel.* Allen G. Campbell v. George Q. Cannon.

The object of the suit seemed to be, First; to enjoin Cannon from drawing his salary as Delegate to Congress. Second, to declare void the certificate of naturalization. Third, to obtain a decree that Cannon was not eligible to Congress. The complaint was signed by Sutherland & McBride and P. T. Van Zile as attorneys for plaintiff; it will be found in the appendix.

The court had no jurisdiction of such complaint because the direct effect and probably the sole object was to have the court decide for the House that Cannon had no right to sit as a member of the House of Representatives. A motion was made to dissolve the temporary injunction. The motion was granted. Cannon continues to receive the pecuniary benefit of the enrollment. A demurrer was interposed to the form and objects of the suit, but mainly to the jurisdiction of the court to take from Congress the determination of questions involved.

1. No suit can be maintained to annul a grant existing by Act of Congress except the Attorney-General of the United States appear as relator or the United States as plaintiff.

United States v. Throckmorton, 8 Otto, p. 70.

2. Campbell did not allege in the complaint that he was elected, but merely that he had a certificate. The fair presumption from reading the complaint would be—everything being most strongly construed against the pleader, according to the rules of pleading—that Cannon was elected and was occupying and fulfilling the duties of the office, in short, the Delegate *de jure* and *de facto*; Campbell then had no interest in the controversy and could not be relator.

3. The pretended frauds set forth were not such as a court of equity will ever in any case take cognizance of; equity never sets aside judgments on account of mistakes of law, so if the court mistook the effect of Cannon's residence, it was no ground for setting aside the certificate of naturalization. Courts of equity do not set aside judgments rendered upon untrue testimony. (See opinion of Judge Shaw in *Greene v. Greene*, 2 Gray, 361; where this branch of the law is elaborately reviewed.)

4. The court of chancery cannot try title to any office.

1 High on Injunction, Secs. 1256-1312, 1314, 1315.

5. The Clerk of the House had exclusive jurisdiction to enroll the members of the House, and the District Court can have no jurisdiction to review that action.

6. By the Constitution of the United States, the House of Representatives is the exclusive judge of the election and qualification of its own members. It is a gross usurpation for any court to attempt to determine either the election or qualifications for the House.

These were some of the reasons laid before the judge of the District Court why the demurrer should be sustained and the complaint dismissed.

The judge presiding, John A. Hunter, did sustain the demurrer and dismiss the complaint. He rendered his opinion, however, in the absence of the attorney for Mr. Cannon, and then allowed Jabez G. Sutherland, attorney for "plaintiff," the same who also took testimony for Cannon in the Forty-fourth Congress to draw the order in his, Sutherland's handwriting, in which condition it now stands. Sutherland put into that order some remarkable language for any court to hold in sustaining a demurrer. This probably is the first case in the history of jurisprudence, where a court at once determines that he has no power to proceed to determine the case, and at the same time renders a decree in favor of plaintiff.

Among lawyers three would be need of little to be said of the ridiculous features of this order; not does it in itself have any effect; but immediately upon the filing of the order the agents of the conspiracy telegraphed to all the newspapers of the country that Judge Hunter had decided the naturalization of Cannon fraudulent; and solemn essays and articles appeared on the merits and effects of such decision, as if the decision had been rendered on final decree, after a hearing of the facts.

That a demurrer admits nothing except for the purpose of the argument of the demurrer, and cannot be used in any collateral or other proceeding, is abundantly proven by the following extracts from prominent authority. In the case of the Commercial Bank of Manchester v. H. S. Buckner, appealed from the Circuit Court of Louisiana to the Supreme Court of the United States, Justice Wayne, in rendering the decision, said:

"It was frequently urged in the argument by the counsel for complainants, that the demurrer of the defendant was a confession of the frauds alleged in the bill, and that, therefore, the Circuit Court had jurisdiction to give relief.

"Our view of that demurrer is different. It is only a confession of facts *well pleaded*, but in this bill none were so; the power of the court to give relief, and of the complainants to bring a suit, either at law or in equity, for the original debt which they had proved in bankruptcy, having been mistaken."

20 Howard, p. 314.

That the facts in this case were not *well pleaded* is proven by the dismissal of the whole case, including both facts and legal propositions. In 1 Greenleaf on Evidence, Sec. 551, we find the following:

"But a *demurrer* in chancery does not admit the fact charged in the bill; for if it be overruled, the defendant may still answer. So it is as to *pleas* in chancery; these as well as demurrers, being merely hypothetical statements that, supposing the facts to be as alleged, the defendant is not bound to answer."

Other authorities, notably 9 Barbour, page 301, might be cited showing that Judge Hunter not only made assertions against the facts, but contrary to plain and simple principles of law.

Chitty on pleadings, says:

"The common doctrine that a demurrer admits the facts stated as the pleading, must be understood with this *qualification that it is only upon his argument.*"

"A demurrer presents only an issue in law to the court for consideration; the jury have no concern with it; and although it is a rule of pleading, that a demurrer admits facts well pleaded *for the sole purpose of determining* their legal sufficiency, yet as a rule of evidence, that it never was supposed the demurrer admitted anything."

Pease v. Phelps, 10 Conn., 68.

See also, Stinson v. Gardiner, 34 Me., 74.

That a demurrer well taken should have an effect against the party demurring, greater than if not well taken, is preposterous; for, by the practice of the courts in Utah as elsewhere, if a demurrer is overruled, the defendant has an opportunity to deny the facts of the complaint, and try this issue, before any decree can be obtained by the plaintiff. Under all the circumstances, the interpolation into the order of the language imputed to the court was the grossest and gravest of frauds, whether done by one of the original conspirators or by the mistake of the judge himself.

Evidently aware of the weakness of their legal position, the promoters of the scheme to make 1,357 votes count more than 18,568, attempt to fortify it by a breastwork of unsupported calumnies. Failing to make out a case that will bear the scrutiny of dispassionate judgment, they think to divert criticism by enlisting prejudice and arousing passion. The ruse, we doubt not, will be perceived and will fail of its purpose. But lest the assertion made about "Mormon" Church influence might be taken by those unfamiliar with the facts as probably correct, it will be necessary to notice the closing paragraph of the disingenuous presentation of the case of Mr. Campbell.

It is alleged that "the church vote in Utah is in no sense an expression of the will of the voters;" that the "Twelve Apostles declare who shall be candidates and who shall be voted for," by "edicts that are as absolute with the masses as those of a Russian Czar;" that "a free vote in Utah does not exist and never has existed." The term "church vote" to begin with is a misnomer. Elections in Utah are not conducted by church voting any more than in other parts of the country. They are regulated by statutory laws which render them fair and free to all citizens with the proper qualifications. There are two parties in Utah, one called the People's Party, the other the Liberal Party. The former is composed of the great majority of the citizens. The strength of the latter is exhibited

in the vote cast for Mr. Campbell. The People's Party has its territorial and county committees chosen at regularly called conventions. Primaries and other political gatherings assemble and are conducted on similar general principles to those of the great political parties of the country. They are as distinct from the "Mormon" Church organization as the Democratic machinery is from the Catholic Church, or the Republican from the Methodist Church. Advantage is sought to be taken by the special pleaders for Mr. Campbell, of the coincident Church Conference and Territorial Convention in October of 1880. When it is understood that delegates are selected in the various counties, reaching as far as from twenty to over three hundred miles from Salt Lake City, much of it outside of railroad connection, the convenience of holding the Territorial Convention at a time when a general gathering of the people took place at the Territorial Capital will be readily perceived. But if the edict of twelve men is absolute and all that is necessary, why should the people elect committees to call meetings, and why should they take the trouble to go through the forms and labors of ward primaries, county conventions and territorial assemblies, when "the duty to vote a ticket determined by the Church is unquestioned?"

The instances cited as proof that there is no free voting in Utah, and that twelve Church officials exercise absolute power for Church purposes, are most singularly chosen. The case of Judge Kinney shows that a non-"Mormon" was elected as Delegate to Congress; and the case of Bishop Woolley proves that the people who cannot vote "except as the absolute edict of the Twelve commands," elected Woolley, when another man was "placed on the ticket by order of those Church authorities." Thus, the people were "ordered" to vote for Clinton, but instead, elected Woolley; and this proves that "the duty of a 'Mormon' to vote the ticket determined upon by the Church is unquestioned," and that "a free vote in Utah has never existed!"—*q. e. d.*

The assumption that the elected candidate was ordered to decline the office is as gratuitous as the assertion about the edicts of the Twelve Apostles. No order, decree, instruction or advice of the kind is quoted; it cannot be because none exists, even in the imagination of those who make the charge; they know better or they must be oblivious indeed to the plain and indisputable facts. But the conclusion arrived at after all these groundless assertions is most amusing. Because the 18,000 who voted for Mr. Cannon were ordered to do so, therefore 1,300 voted for Mr. Campbell as their free choice. And this is the reasoning of legal minds! Supposing the Cannon votes to have been forced, that would not prove that the Campbell votes were free. And coming down to facts, it could be shown, if it was worth while, that the so-called "Liberal" votes are far more open to the charge of coercion than those for the People's ticket.

The non-"Mormons" previous to the election were visited, lectured, urged, stormed and threatened by officials and others who took the stump for Mr. Campbell, and many of their incendiary and intimidating harangues are on record.

There is one fact which of itself refutes all the rash assertions about Church dictation and the lack of freedom at elections in Utah; and that is, the perfect secrecy of the ballot. It is impossible, under the law, to tell how any person votes at a Utah election. The ballot is placed in an envelope; all the envelopes are uniform; no mark or device of any kind is permitted to be placed upon them: the voter can vote for whom he pleases, and no one can discover his secret unless he pleases to disclose it. Therefore, no matter who might dictate, the voter is protected in his freedom of action.

And then consider the motto quoted by these "Liberal" logicians—or as they call it, the platform—adopted by the Convention which nominated Mr. Cannon:

"The highest possible liberty for man and woman!"

Truly a characteristic utterance for "serfs and slaves," is it not? But those wonderful reasoners endeavor by innuendo to hint at something in that motto, bearing peculiar significance, coupling it with a baseless charge about polygamy. Such a low insinuation is indicative of a prurient mind, and is worthy of persons who make assertions concerning the marriage relations of a body of men, most of whom, coming from distant places, were perfect strangers to them, and of whose domestic affairs they were necessarily in the most profound ignorance.

An isolated passage from Mr. Cannon's letter of acceptance is seized and distorted from its evident meaning. But the Delegate in that letter recognizes the *people* as the nominating power, their desires being expressed through their representatives in the Convention. It is the *people* whose wishes he announces himself determined to do all in his power to meet; it is the *people's* interests that he intends to watch; it is the duties which the *people* impose upon him that he promises to discharge with zeal and fidelity. What more can be asked of any nominee of any party in any part of the Union? And how much does this look like the language of one elected by the mere dicta of a dozen men? On the same principle by which Mr. Cannon's words are wrested to refer only to the persons who nominated him, the letters of acceptance from every prominent man in the country could be twisted to apply to a faction.

The eulogy upon the handful of voters who cast their ballots for Mr. Campbell will be valued at its worth. They were chiefly the denizens of the mining camps. They do not include one-half of the respectable and educated non-"Mormons" of Utah, who are in no sense represented by

that gentleman. The Territory had schools, business, energy, enterprise and all the elements of true civilization, before the class represented in Mr. Campbell's vote came into it with the kind of civilization which is exhibited by saloons and gambling dens, houses of infamy, brawls, riot and lawlessness. Unwittingly the advocates and supporters of these things admit the evil of their cause. They speak of the "Mormon" people plodding along "under orders to keep their garments unspotted from Babylon, *because its principles are at war with free thought and republican government.*" We admit that the people are under *advice* of this kind, and for the reasons named. This "Babylon" which Mr. Campbell's legal advisers praise and uphold, is indeed opposed to free thought and republican government. It would stifle the thought and speech of "Mormon" devotees because their faith differs from orthodoxy. It seeks to subvert republican government in the Territory by rendering null and void the ballots of almost the entire voting population. It would make the *ipse dixit* of one man, appointed by arbitrary power, more potent than the votes of nearly nineteen thousand citizens. It would overturn the republican principle that "the majority rules" and give control to a very small and indeed insignificant minority.

To crown the folly and inconsistency of their whole case the advocates of the minority candidate, after laboring desperately to throw blame on Mr. Cannon for acknowledging his nomination by a part of the people, "insist" upon the duty of an American Congressman, not to judge impartially, not to regard the votes and rights of the majority, not to "serve the whole people as one," but to "*help his own friends,*" they being, under the towering egotism of these legal sophists, themselves and the small sprinkling of supporters of Mr. Campbell.

We appeal to American Congressmen to avoid all prejudice; to disregard the calumnies and insinuations dragged into this case for unworthy objects; to deal out the same evenhanded justice to a "Mormon" Delegate as to a "Gentile" Representative; to put their feet on the usurpation of a petty official who has attempted to assume their august functions; to recognize the inalienable rights of the majority; to preserve the sanctity of the ballot box; to protect naturalized citizens who in good faith have complied with the forms of law, from the strained technicalities of defeated partisans; and to stand as the representatives of popular suffrage and the principles of constitutional liberty and law, unmoved by any considerations than regard for right, the claims of duty and the dictates of enlightened conscience.

DECLARATION OF RESULT OF ELECTION BY AND CERTIFICATE OF GOVERNOR MURRAY.

On the fourteenth day of December, 1880, the Secretary of the Territory, in my presence, opened the returns received by mail, of an election for Delegate of the Territory of Utah in the Forty-seventh Congress, held on the Tuesday after the first Monday of November, of said year.

The returns show that George Q. Cannon received 18,568 votes, and Allen G. Campbell received 1,357 votes. At that time notice of protest by Allen G. Campbell, was given, which protest was afterwards filed, objecting to a certificate being issued to Mr. Cannon. Following is the protest:

To His Excellency, Eli H. Murray, Governor of the Territory of Utah:

The time will soon arrive for the final canvass, under your supervision, of the return of votes given at the late election, for Delegate to Congress from this Territory.

I am not ignorant of what the public generally know in respect to the voting at this election and its supposed result. On the surface the returns will not show, probably, that a majority of the votes actually cast were given for me. But if it be true, as I insist it is, that all the votes not polled in my favor are legally blank, then I owe it to those who placed me in nomination, and by a still higher obligation to the whole community, in the interest of good government to protest, and I do protest against the counting of any votes for George Q. Cannon.

The performance of the duty, however, would be productive of no result except to mortify and disgust legal voters whose choice is nullified, unless there is a power conferred on you to so conduct this canvass that legal voters shall only be included.

If it were a matter of indifference whether the names voted for as candidates represented actual persons or mere mythical characters—persons qualified or persons ineligible—if it were immaterial to discriminate between the votes given by those entitled to exercise the elective franchise and those given by persons whom the law excludes on the ground of sex, minority, or alienage from the privilege of voting, then a mere count of votes and comparison of aggregates would decide to whom your certificate of election should be given. If it is not, however, consonant to the American theory of popular elections to office, to ignore such disqualification nor to confer such limited powers upon those charged with the duty to ascertain the result, then there can be no elimination of votes illegally received.

It cannot be said that the laws have so imperfectly guarded the ballot box and provided for pure and regular elections, that if illegal votes are once received by some error of judgment or failure of duty by officers registering voters or having the immediate control of elections, the wrong is forever incapable of rectification.

No remedy is adequate or effective in respect to offices for short terms, which does not administer the corrective during the canvass, for before any other remedy can be sought and applied, the motive to pursue it ceases, by

the expiration of the term, the wrong prospers and the authors are thereby encouraged to repeat it and generally do.

This subject has such local importance that I venture some suggestions in support of your powers in the premises, at the risk of incurring your criticism for assuming to defend the executive jurisdiction.

Section 25 of the Utah Compiled Laws provide: "That so soon as all the returns are received, the Secretary, in the presence of the Governor, shall unseal and examine them, and furnish to each person having the highest number of votes for any Territorial office a certificate of his election." The returns here spoken of are: A brief abstract of the offices and names voted for, and the number of votes each person receives.

By Secs. 23 and 24 it will be observed that the duty imposed by Sec. 25, is to give the certificate to the person having the highest number of votes, and that it is not required by the terms of that section that the highest number of votes shall be determined from the returns. The duty to examine the returns, and that to give a certificate, are successive and distinct duties. The returns from certain counties, or the vote of certain precincts, may have to be rejected, for causes apparent on the face of the returns, or other evidence may afford grounds for such rejection.

The direction to you and the Secretary as final canvassers, is to issue the certificate to the person having the highest number of votes; therefore, since the mode of ascertaining the important fact is not prescribed, and since on general principles, when a general duty is required to be performed, there is conferred by necessary implication the incidental power to adopt any suitable means necessary to the doing of that duty, evidence may be received in connection with the returns, to assist in coming to a correct conclusion. This construction of the statute harmonizes your functions in respect to this office with those of similar offices generally.

In Cushing's Law and Practice of Legislative Assemblies, page 52, the author quotes from another: "There can be no doubt that in those branches wherein the law has marked out a definite line, it is ministerial; but as regards the two material branches of deciding upon the capacity or incapacity of candidates, or upon the qualifications or disqualifications of electors, the subject requires some investigation; but if the returning officer (you are clearly one) be fully apprised of some notorious disqualification, whether of a candidate or of an elector, such as their being minors, or claiming in the right of property, which clearly does not entitle them to the privilege, he is so far a judicial officer as to prevent their voting or being returned," and the author adds: "In judicial decisions of this country, when the point is adverted to, it seems to be considered, that the functions of returning officers are chiefly judicial in their character."

If so, it follows of course, in the absence of a legislative rule to the contrary, that you are to act upon evidence, and on any evidence which applies to the subject, and would be competent before any other judicial tribunal having the same question to decide.

I shall, in accordance with these views, address this, my protest to you, as a quasi judicial officer, protest against the issue of any certificate of election to George Q. Cannon, and I demand the issue of one to myself, because he has not, and I have, the highest number of votes for the office of Delegate to Congress of the United States, on the following grounds:

First—It will appear by the returns to the Secretary that 1,357 votes were given for me for said office, and there is no evidence pending to gainsay my qualifications for the office, or those of the electors voting for me.

Second—George Q. Cannon is an unnaturalized alien. Being such he is not eligible to the office; all the votes given for him are void. I quote from the author before referred to: "If an election is made of a person who is ineligible, that is incapable of being elected, the election of such person is absolutely void; even though he is voted for at the same time with others who are eligible, and who are accordingly elected, and this is equally true

whether the disability is known to the elector or not; whether a majority of all the votes, or a plurality only, is necessary to the election, and whether the votes are given orally or by ballot." (Id. p. 66.) According to this authority and the authority which he cites, it is the law in this country, and also in England, that not only will the election of a disqualified person be held as void, but if such election takes place after notice of the disqualification is given to the electors, the candidate having the next highest number of votes will be elected. (Id. pp. 66, 67.)

Notice of Mr. Cannon's disqualification has been very thoroughly published in this Territory before the election.

This legal objection of alienage derives great force from the political and moral aspect of his life and conduct. George Q. Cannon is a polygamist, having lived for many years, and is still living with four women as wives, in violation of the law. He openly advocates polygamy in his public addresses in Utah, and thus incites others to break the law enacted by Congress on that subject in harmony with the moral sentiments of the civilized world. Not only is he not naturalized, but he is not qualified to be naturalized; without thorough reconstruction he could not be proven to be a man of good moral character, nor could he, while in his present criminal contumacy, sincerely make oath that he is; "Attached to the Constitution of the United States and well disposed to the good order and happiness of the same."

Third—Under void legislation of this Territory, females have voted in large numbers; they are partisans of said Cannon, and it must be taken for granted that they voted for him at the late election. Calculating the present number of votes in this Territory by adding to the vote given six years ago, (about 27,000), according to the ratio of popular increase from 1870 to 1880, as shown by the census returns, there were at least 40,000 de facto voters in the Territory when the last election took place. The entire vote polled at this election, including the vote of females, was less than 20,000; therefore at least 20,000 voters stayed at home, and less than half the total vote was actually polled and returned.

The females in this Territory claiming the right to vote, outnumber the males having the right; the poll lists show also that they outstrip the males in voting. Thus it will be seen that there are more females in this Territory claiming the right to vote than the whole number of votes polled at the late election. As these votes are illegal, how can you avoid the conclusion that they have vitiated the election, by rendering it impossible to determine without proof, that the pretended majority reported for Mr. Cannon does not consist of such votes. The fact that there was such an enormous illegal vote, known as certain to be polled will account for the absence of so many legal voters from the polls.

That the act of the Territorial Legislature purporting to establish female suffrage is void, is now generally conceded. It is so because it attempts to confer the privilege by a special act on different and easier terms of qualification than those required by existing general law applicable to the other sex, thus violating the rule of uniformity.

In conclusion, be it understood that I protest against the issuance of any certificate to George Q. Cannon as the substantive matter and purpose of this paper; and it seems clear beyond all controversy, that if he is not qualified to hold the office, that no majority of legal votes can be said to have been given for him, and that it is within your power, for these causes, to withhold the certificate of election.

On reaching this conclusion as a secondary matter, I trust you will find it consistent with your views, and in the line of duty to hold that the votes given for me, entitle me to the certificate.

With great respect, I have the honor to be your obedient servant.

ALLEN G. CAMPBELL.

Frisco, Dec. 12th, 1880.

CANNON'S ANSWER.

The answer of Mr. Cannon to the protest of Mr. Campbell was filed before me January 7, 1881, which answer is as follows:

To His Excellency Eli H. Murray, Governor of the Territory of Utah:

SIR—In reply to the communication of Allen G. Campbell, Esq., in which he protests against the issue of a certificate of election to me as Delegate of the Territory of Utah in the Forty-seventh Congress of the United States, and demands the issue of the certificate to himself, I respectfully submit the following statements:

The grounds on which Mr. Campbell bases his protest and demand are:

1. That as canvassing officers the Governor and Secretary have power to "go behind the returns," and ascertain from extrinsic evidence the number of votes legally cast for each candidate.

2. That there is no evidence tending to disprove his qualifications for the office of Delegate to Congress.

3. That there is no evidence tending to disprove the qualifications of the 1,367 electors who voted for him.

4. That I am an unnaturalized alien.

5. That, being such, I am not eligible to the office of Delegate to Congress, and that my ineligibility resulting from alienage is aggravated by polygamy, which he thinks is incompatible with citizenship and inconsistent with an honest oath of allegiance to the Constitution of the United States.

6. That all of the 18,568 votes cast for me at the late election are therefore void and are to be excluded from the canvass.

7. That as a consequence the certificate of election is to be delivered by the canvassers to him, and not to me.

8. That the females in the Territory who claimed the right to vote outnumbered all the votes polled at the election.

9. That it "must be taken for granted" that all votes cast by females were cast for me.

10. That the Territorial legislation which extends the right of suffrage to females is void.

11. That it is, therefor, impossible to determine, without proof, that the 18,568 votes cast for me included more legal votes than the 1,357 votes cast for him.

12. That the votes of the females have "vitiated the election."

With your Excellency's permission, I will answer these several propositions in their order.

1. The process of reasoning by which Mr. Campbell reaches the conclusion that the Governor and Secretary, as canvassing officers, have power to "go behind the returns, and to ascertain from extrinsic proofs the number of votes cast for each candidate," is first to be considered. He refers to the following provisions of the "Compiled Laws of Utah:"

"23. Immediately upon receiving the electoral returns of any precinct, the County Clerk and Probate Judge, or, in his absence, one of the selectmen, shall unseal the list and ballot box, and count and compare the votes with the names on the list, and make a brief abstract of the offices and names voted for, and the number of votes each person received; the ballot box shall then be returned and the vote and list preserved for reference in case the election of any person shall be contested.

24. When all the returns and abstracts are made the clerk shall forthwith make a general abstract and post it up in his office, and forward to the Secretary of the Territory a certified copy of the names of the persons voted for, and the number of votes each has received for Territorial offices, and

furnish each person having the highest number of votes for county and precinct offices a certificate of his election.

25. So soon as all the returns are received, the Secretary, in presence of the Governor, shall unseal and examine them, and furnish to each person having the highest number of votes for any Territorial office a certificate of election."

He thinks that because these statutory provisions do not, in express terms, require the canvassers to give the certificate to the person shown by the returns to have the highest number of legal votes, they by implication do require them to give it to the person who, whatever the returns show, did in fact receive the highest number of legal votes; that this duty necessarily implies the power to employ suitable means to ascertain who received the highest number of legal votes; and that, therefore, the Governor and Secretary, as canvassers, have the right to resort to extraneous evidence to ascertain the real facts in this case. He seeks to fortify his conclusion by the following citation from page 52 of "Cushing's Law and Practice of Legislative Assemblies."

"There can be no doubt that in those branches wherein the law has marked out a definite line it is ministerial; but as regards the two material branches of deciding upon the capacity or incapacity of candidates, or upon the qualifications or disqualifications of electors, the subject requires some investigation; but if the returning officer be fully apprised of some notorious disqualification, whether of a candidate or of an elector, such as their being minors or claiming in the right of property, which clearly does not entitle them to the privilege, he is so far a judicial officer as to prevent their voting or being returned. In judicial decisions of this country, when the point is adverted to, it seems to be considered that the functions of returning officers are chiefly judicial in their character."

I respectfully submit that each and every step in this reasoning is erroneous, and that the conclusion reached is absolutely destitute of warrant in law. The provisions of sections 23, 24 and 25 of the statutes of Utah confer upon the Governor and Secretary, as canvassing officers, no judicial power to "go behind the returns" for the purpose of ascertaining the number of votes cast for any candidate. It is made their duty to ascertain whom the returns show to have received the highest number of votes, and to give the certificate to him. The only judicial or *quasi*-judicial power vested in them is to determine whether the papers before them purporting to be returns are returns made in substantial conformity to the law. If they decide that the papers are such returns, they must embrace their showing in the official canvass. If they decide that they are not such returns, they must exclude them from the canvass.

The precinct judges of elections in this Territory make no returns beyond the mere transmission to the county clerk of the sealed ballot box and list of electors. They are not precinct canvassers. They do not return to the county clerks the number of votes cast for each candidate. They only return the ballots and the poll lists. Upon the county clerks and probate judges, or selectmen, is imposed the duty of canvassing the votes, in the first instance, by counting the ballots, and comparing their number with the number of names on the poll lists, and preparing statements of the offices and names votes for, and the number of votes cast for each candidate. The votes and lists are not sent to the Secretary of the Territory, but remain in charge of the clerks. The law makes no provision for any inspection of the ballots or of the poll lists by the Governor or Secretary before their canvass is completed and the certificates delivered to the successful candidates. It places nothing before the Governor and Secretary, except a certified copy of the names of the persons voted for and the number of votes cast for each. If the law requires them not merely to ascertain the number of votes shown by the clerk's returns to have been received by each candidate, but the number of votes shown by the ballots and poll lists, and by intrinsic proof, to

VI

have been legally cast for each candidate—that is to say, not merely to canvass the clerk's returns, but to canvass the votes themselves and determine their legality—then the law is an outrage, not only on the Governor and Secretary, who are compelled to make "bricks without straw," but on the candidates whose rights are to be adjudicated by officers from whom the law deliberately withholds the means essential to correct adjudications. This would be a most scandalous condition of the territorial law if it really existed. But such is not the law of Utah.

The question now under consideration has been adjudicated many times by judicial and legislative tribunals in the United States, upon statutory provisions substantially like those embraced in Sections 23, 24 and 25 of the "Laws of Utah." It has never been decided in favor of Mr. Campbell. Mr. McCrary, in his law of Elections (Section 82), correctly states the rule established by the concurrent authority of these decisions to be, that the canvassers "must receive and count the votes as shown by the returns, and they cannot go behind the returns for any purpose; and this necessarily implies that when a paper is presented as a return, and there is a question as to whether it is a return or not, they must decide that question from what appears upon the face of the paper itself."

Under statutory provisions similar to those of Utah, the Supreme Court of Missouri held that the powers of the canvassers were restricted to the determination of the result shown by the returns. The following is the provision of the Missouri statute:

"The Secretary of State, in the presence of the Governor, shall proceed to open the returns and to cast up the votes given for all candidates for any office, and shall give to the persons having the highest number of votes for members of Congress from each district, certificates of election under his hand with the seal of the State affixed thereto."

In *State vs. Steers*, 44 Mo., 224, the court held:

"Here is no discretion given, no power to pass upon and adjudge whether votes are legal or illegal, but the simple ministerial duty to cast up and to award the certificate to the person having the highest number of votes."

The New York election law of April 17, 1822, provides that the inspector appointed for that purpose,

"Shall, in person, deliver to the said clerk at this office, or to his deputy, or to the keeper of said office, a true copy of the said statement of votes," and thereupon the board of canvassers "shall proceed to calculate and ascertain the whole number of votes which shall be given at such election in the said county for the several persons who shall be voted for as Governor, Lieutenant Governor, Senators and Representatives in the Congress of the United States, or so many of the said offices as shall be voted for, and shall set down in writing the names of the several candidates so voted for at any such election for any of the offices aforesaid, and the number of votes in words written at full length which shall be given for any such candidates at any such election in the said county, and shall certify the same to be a true copy of the votes given in said county."

In the case of *The People vs Van Slyck*, 4 Cow., 323, which was decided in February, 1825, under the foregoing statutory provision, the Court said:

"The duties of the canvassers are ministerial. They are required to attend at the clerk's office and calculate and ascertain the whole number of votes given at any election, and certify the same to be a true canvass. This is not a judicial act, but merely ministerial. They have no power to controvert the votes of the electors."

It is provided in section 25 of the Revised Statutes of Illinois (1856) that the clerk of the County Commissioners' Court, taking to his assistance two justices of the peace of his county,

"Shall proceed to open the returns and make abstracts of the votes in the following manner: * * * And it shall be the duty of the said clerk of the

County Commissioners' Court immediately to make out a certificate of election to each of the persons having the highest number of votes."

In the case of *The People vs. Head*, 25 Ill., 327, the court held:

"This contest, under our statute, is an original proceeding instituted by the contestant for the purpose of trying the legality of the election, and not of the canvass. It goes behind the canvass and purges the election itself. The court, in trying it, is not confined to the poll books as returned, but it can go behind these and inquire, by proof *dehors*, whether the votes, or any of them, were illegal. But the canvassers have no right to do this. Theirs is a mere mechanical, or rather, arithmetical duty. They may probably judge whether the returns are in due form, but, after that, they can only canvass the votes for the several candidates and declare the result."

Section 95, chapter VI, of Revised Statutes of Wisconsin (1849) is in these words:

"Whenever it shall satisfactorily appear that any person has received a plurality of the legal votes cast at any election for any office, the canvassers shall give to such person a certificate of election, notwithstanding the provisions of law may not have been fully complied with in noticing or conducting the election, or canvassing the returns of votes, so that the real will of the people may not be defeated by an informality."

Under this statute it was held by the Supreme Court of Wisconsin in *Attorney General vs. Barstow*, 4 Wis., 775, as follows:

"Whether it would have been competent for the Legislature, under the Constitution which delegates all of the judicial power of the State to the courts of the State, to give to the board of State canvassers judicial authority to settle and adjudicate rights of this nature, it is not necessary to inquire. They have not given them any such power. Their duties are strictly ministerial. They are to add up and ascertain by calculation the number of votes given for any office. They have no discretion to hear and take proof as to frauds, even if morally certain that monstrous frauds have been perpetrated. The ninety-fifth section of this statute gives them no such power."

The Revised Statutes of Michigan for 1846 (p. 51) contain the following provision:

"The said board of canvassers, when formed as aforesaid, shall proceed to examine the statements received by the Secretary of State of the votes given in the several counties, and make a statement of the whole number of votes given for the office of Representative in each Congressional district, which shall show the names of the persons to whom such votes shall have been given for said office, and the whole number of votes given to each. The said canvassers shall certify such statement to be correct, and subscribe their names thereto, and they shall thereupon determine what persons have been, by the greatest number of votes, duly elected to such offices, and make and subscribe on such statement a certificate of such determination, and deliver the same to the Secretary of State."

Under this statutory provision the Supreme Court of the State, in the case of *The People vs. Van Cleve*, 1 Mich., 336, said:

"In a republican government, where the exercise of official power is but a derivative from the people through the medium of the ballot, it would be a monstrous doctrine that would subject the public will and the public voice thus expressed to be defeated by either the ignorance or the corruption of a board of canvassers. The duties of these boards are simply ministerial. Their whole duty consists in ascertaining who are elected, and preserving the evidences of such election."

It is provided on page 77 of the Revised Statutes of Maine for 1841, as follows:

"The returns from each town and plantation shall be delivered into the office of the clerk of the county commissioners on or before the first day of the meeting of said commissioners next after the said month of September, to be by them opened and compared with the like returns from the several

towns and plantations in such county or registry district, and the person having a majority of the votes shall be declared registrar of deeds for said county or registry district."

The Supreme Court of Maine, in *Bacon vs. York County Commissioners*, 26 Me., 498, a case which arose under this statute, held:

"The canvassers had no power to go beyond the returns of the selectmen and town clerks, and receive other evidence, and determine therefrom that the town meeting was not properly called, and for that cause reject the votes of that town."

In *O'Ferrall vs. Colby*, 2 Minn., 186, a case decided under similar statutory provisions, the court held:

"We cannot, therefore, resist the conclusion that the duties of the clerk of the board of supervisors in receiving and opening election returns, in canvassing and estimating the votes, and in giving certificates of election, are purely ministerial, and that no judicial or discretionary powers are conferred upon him or the board of canvassers, except, perhaps, so far as to determine whether the returns are spurious or genuine, or polled at established precincts, and in ascertaining from the returns themselves for whom the votes were intended."

The Supreme Court of Indiana, under a similar statute, in the case of *Brower vs. O'Brien*, 2 Carter (Ind.) 430, held:

"With regard to this point, it may be observed that the duties of both the board of canvassers and the clerk in making the statement are purely ministerial. It is not within their province to consider any questions relating to the validity of the election held or of the votes received by the parties voted for. They are simply to cast up the votes given for each person, from the proper election documents, and to declare the persons who, upon the face of these documents, appear to have received the highest number of votes given, duly elected to the offices voted for."

The paragraph quoted from Mr. Cushing's work shows upon its face that the returning officer, who is said to be "so far a judicial officer as to prevent their *voting* or being returned," is a judge of election as well as a returning officer. If Mr. Cushing refers to mere canvassers, his statement, that in the judicial decisions of this country their functions are held to be chiefly judicial, is an inexcusable blunder.

2. Mr. Campbell's next proposition is, that there is no evidence tending to impeach his qualifications for the office of Delegate to Congress. That the returns present no such evidence, is probable; and if the returns on their face disclose nothing to impeach his qualifications, it is quite immaterial to inquire now whether Mr. Campbell is or is not eligible to the office which he seeks. The House of Representatives is the only tribunal empowered to adjudicate that question. If the Governor and Secretary find, from the returns, that he is elected, they must award the certificate to him, whatever proofs outside of the returns may or may not be attainable to impeach his eligibility before the House of Representatives. Such proofs cannot be used in this canvass.

3. The same answer is to be made to the assertion that there is no evidence tending to impeach the qualifications of the 1,357 electors who voted for Mr. Campbell. Whatever evidence may exist on this point outside of the returns, it cannot be considered by the Governor or Secretary in this proceeding; it can only be considered by the House of Representatives of the United States.

4. Mr. Campbell's next assertion is, that I am an unnaturalized foreigner. This presents a question of fact upon which the returns to be canvassed by the Governor and Secretary probably furnish no evidence beyond the presumption, to be drawn from those returns, that the electors performed their duty according to law, and, therefore, that the candidates for whom they voted have all the legal qualifications for office whatever they may be. If there be any proofs attainable tending to overthrow this pre-

IX

sumption and to show that I am an unnaturalized foreigner, and therefore destitute of the necessary qualification of citizenship, it is obviously incompetent for the canvassing board to go behind the returns and consider such proofs. The only tribunal which has power to do so in this case is the House of Representatives of the United States.

The difference between the duties of the precinct election officers and those of the canvassers is very great. The precinct election officers are judges of election. In the first instance it devolves upon them to judge of the qualifications of electors, in subordination to the provisions of law regulating their duties; but it never devolves upon any canvasser to judge of the qualifications of electors unless by virtue of express—and, I will add, most extraordinary and dangerous—statutory provisions. Only in a few exceptional cases have any such indefensible provisions been made by statute in the United States.

The House of Representatives is, by the Constitution, made the judge of the election, returns and qualifications of its members. The power of the House does not exclude the power of the judges of election to act within their statutory authority as judges of the qualifications of electors; nor does it exclude the power of canvassers to act as judges of the returns presented to them to be canvassed, so far as to determine whether they are or are not returns substantially conforming to the law. But it does not exclude the power of precinct officers to judge of the qualifications of candidates; and it excludes the power of canvassers to judge either of the qualifications of electors, or of the qualifications of candidates. It also confers upon the House the power to decide on all points, including the qualifications of electors and the legal sufficiency of the precinct returns.

I respectfully submit, therefore, that the Governor and Secretary have no power to go behind the returns to ascertain whether I am or am not an unnaturalized foreigner. This disposes of the point.

But then the fact is that on the seventh day of December, 1854, by a judgment of a court of competent jurisdiction, I was duly naturalized according to law, as Mr. Campbell well knows.

In the case of *Spratt vs. Spratt*, 4 Pet., 393, Chief Justice Marshall said: "The various acts upon the subject submit the decision of the right of aliens to admission as citizens to courts of record. They are to receive testimony, to compare it with the law, and to judge upon both law and fact. This judgment is entered on record as the judgment of the court. It seems to us, if it be in legal form, to close all inquiry, and, like every other judgment, to be complete evidence of its own validity."

In *Campbell vs. Gordon*, 6 Cranch, 176, the Supreme Court of the United States held:

"It is true that this requisite (good moral character) to his admission is not stated in the certificate; but it is the opinion of this court that the court of Suffolk must have been satisfied as to the character of the applicant, or otherwise a certificate that the oath prescribed by law had been taken would not have been granted. The oath, when taken, confers upon him the rights of a citizen, and amounts to a judgment of the court of his admission to those rights. It is, therefore, the unanimous opinion of the court that William Currie was duly naturalized."

If, now, it were competent for the House itself, in a contested case, to reverse or vacate this judgment and to declare that I am an unnaturalized foreigner, it would not be competent for the Governor and Secretary, acting as canvassers, to do this. The notion that any jurisdiction to reverse or vacate that judgment for mistake or fraud, or on any other grounds, is vested in the canvassing officers in this case, is too preposterous to admit of any comment from me. But in the case of *Baskin vs. Cannon*, in the Forty-fourth Congress, this precise objection to my eligibility was urged before the Committee of Elections of the House, and was overruled by the unanimous vote of the committee, on the ground that the judgment of the First District Court of Utah on this point was conclusive, and I retained my seat in the House.

Not only is there no legal ground for a question of my eligibility by the Territorial canvassers, or even by the House of Representatives itself, based on the ground of alienage, but though such ineligibility could be a lawful ground of action by the committee or the House, it would not, as Mr. Campbell supposes, be aggravated by polygamy, if that could also be added as a factor in the adjudication. For, in the case of Maxwell vs. Cannon, in the Forty-third Congress, Smith's Digest, 188, it was unanimously held by the committee, with the concurrence of the House, that the only qualifications or disqualifications of Delegates were those prescribed by the Constitution for Representatives, and that polygamy was not a disqualification for a seat in the House of Representatives of the United States.

5. Mr. Campbell's fifth proposition is that my alleged want of citizenship renders me ineligible to the office of Delegate in Congress. I concede, for the sake of the argument, that an unnaturalized foreigner ought to be ineligible to the office of Delegate from Utah, just as he is ineligible to the office of Representative in Congress. I make this concession, not because I am certain that the proposition is founded in the Constitution or in the law, but because it seems to me to be founded in common sense. The Constitution provides neither for the qualifications of the office of Delegate in Congress nor for the office itself. The law accords to every Territory the right to send a Delegate to the House of Representatives of the United States. (Rev. Stats., Sec. 1862). It prescribes the qualification of citizenship for the Delegates from Washington, Idaho, and Montana. (Rev. Stats. Sec. 1906). but for the Delegates from no other Territory. Whether, in the face of the constitutional provisions that "the House shall be composed of members chosen every second year by the people of the several States;" (Art. 7, Sec. 2); that "each House shall be the judge of the election, returns, and qualifications of its members;" (Art. 7, Sec. 5); and that "each House may determine the rules of its procedure," (Art. 7, Sec. 5), the law creating the office of Delegate would or would not have any validity as against a rule of the House excluding from the floor all Territorial Delegates, or any other persons not constitutional members or officers of the House, I admit, for the purposes of this argument, that so long as Delegates shall be received in conformity with the provisions of the statute, it will be within the power of the House, and also its duty, practically to recognize and enforce this qualification of citizenship, whether prescribed by law or not. But it is an insult to the Governor and Secretary to suggest that they are capable of such unwarrantable invasion of the jurisdiction of the courts and of the House of Representatives as to attempt to incorporate as an element into their canvass in this case a decision adverse to my eligibility, based on a reversal or vacation of the judgment by which I was naturalized.

6, 7. The next two propositions of Mr. Campbell may be conveniently considered together. He asserts that by reason of my alleged ineligibility all the 18,568 votes cast for me at the late election are void and are to be excluded from the canvass, and that, as a consequence, the certificate of election is to be given to him, and not to me. I will cite, without discussion, the authorities by which the doctrine involved in these propositions has been repudiated as often as it has appeared in the Senate or in the House.

The case of Smith vs. Brown, 2 Bart., 395, is the leading case in the House of Representatives. It was reported from the committee on elections by the chairman, Mr. Dawes, on the 28th of January, 1868. His exhaustive discussion of the subject appears on pages 402-405 of the second volume of Bartlett's Contested Election Cases. He refers to the case of Ramsey vs. Hall, 23, argued by Mr. Madison in the House at the first session of the First Congress, and to the cases of Albert Gallatin in the Senate in 1793, Philip Barton Key in the House in 1807, John Bailey in the House in 1824, James Shields in the Senate in 1849, and John Young Brown in the House in 1859. He also reviews the English authorities, and the opinion expressed in Cushing's treatise, which is cited by Mr. Campbell, and he closes the

discussion by declaring that "The law of the British Parliament in this particular has never been adopted in this country, and is wholly inapplicable to the system of government under which we live."

In the subsequent case of Zeigler vs. Rice, this precise question was decided as follows:

"Thus it will be seen that, according to the contestee's own statement, he had entered into an agreement to recruit for the rebel army; was on his way to carry out fully his understanding when he was captured, and claimed protection as a rebel officer when captured. The Committee are well satisfied that the acts of the contestee were well understood by the voters of said district at the time the contestee was voted for, but do not agree with contestant that, as contestee was ineligible, the candidate who was eligible is entitled to the seat." (2 Bart., 884.)

The committee accordingly recommended a resolution unseating Mr. Rice and declaring the seat vacant; but the House refused even to evict Mr. Rice. On the contrary, by the adoption of a substitute for the committee's resolution, without a division, Mr. Rice was declared entitled to the seat. The proceedings may be found on page 5447, vol. 80, of the Congressional Globe.

In the Fortieth Congress, Simeon Corley, of South Carolina, Pierce M. B. Young and Nelson Tift, of Georgia, and Roderick R. Butler, of Tennessee, and in the Forty-first Congress, Francis E. Shober, of North Carolina, members of the House, were relieved of their disabilities long after their election, and yet, when so relieved, were admitted to their seats in the House. All were ineligible when chosen, but in neither case was the seat given to a competitor, nor the election even declared void.

In the case of Joseph C. Abbot, in the Senate (Forty-second Congress), the doctrine now asserted by Mr. Campbell was fully considered, and was repudiated by the Senate. There has not been and probably will not be in this country another discussion of the subject so exhaustive as that which was had in this case. The English authorities were all presented, and very few, if any, American decisions, whether judicial or parliamentary, escaped the scrutiny of the Senators who submitted the report of the committee and the views of the minority, which are printed together in Senate Report No. 58, Forty-second Congress, second session.

In the case of Maxwell vs. Cannon, decided in the Forty-third Congress, the same question was raised, and the committee and House, without a division, rejected the doctrine now asserted by Mr. Campbell.

8. In reply to Mr. Campbell's assertion that the females in the Territory who claimed the right to vote outnumbered all the votes polled at the late election, I respectfully submit, in the first place, that this alleged fact probably does not appear on the face of the returns; and, in the next place, that if it be a fact capable of substantiation by extraneous proofs, and at the same time entitled to weight in any aspect of this case, the only tribunal invested with power to ascertain the fact and use it as a basis of judicial action is the House of Representatives of the United States.

9. Mr. Campbell asserts that it "must be taken for granted" that all votes cast by females were cast for me. On this point also Mr. Campbell is mistaken. If this is not shown by the returns, the canvassers can neither presume it nor permit Mr. Campbell to attempt to prove it before them by extrinsic evidence, nor can they consider the fact when so proven. If he shall contest my seat in the next Congress, and shall deem the mode in which the females voted material to any issue in the contest, he will learn that the House will not presume what he asserts on this point to be true, but will compel him to prove it.

10. Mr. Campbell asserts that the territorial legislation which extends the right of suffrage to females is void because "it attempts to confer the privilege by a special act on different and easier terms of qualification than those required by existing general laws applicable to the other sex, thus

violating the rule of uniformity." If this assertion be true, it can have no bearing upon the action of the canvassers, who have no power to look beyond the returns for the purpose of ascertaining whether females voted, how many voted, or for whom they voted, but only upon the action of the House of Representatives in a contest or under a protest before that tribunal. It is not a necessity of my case, therefore, that I shall vindicate the "act conferring upon women the elective franchise," approved February 12, 1870.

11. The next proposition of Mr. Campbell is, that it is, in view of the premises, impossible to determine, without proof, that the 18,568 votes cast for me included more legal votes than the 1,357 votes cast for him. This involves a singular misconception of the effect of these returns and of the relation sustained to them by the Governor and Secretary as canvassing officers. Mr. Campbell asserts the presumption to be that the votes returned for me were illegal votes, and that they are not to be canvassed for me in the absence of affirmative proof *dehors* the returns showing that they were in fact legal votes. The absurdity of this assertion is not even mitigated by a concession that the same presumption arises as to votes cast for him. The rule does not, in his judgment, "work both ways." The truth, however, on this point is very manifest. The presumption is that all votes shown by returns legal in form, to have been cast for him or for me were so cast, and were lawfully cast. This presumption is not conclusive on the House in a contest duly prosecuted. It may be overcome by extrinsic proof. But it is conclusive on the canvassing officers, and cannot before them be overcome by proofs outside of the returns if the returns are regular and legal.

12. Mr. Campbell's last point is that the votes of the women have "vitiated the election by rendering it impossible to determine without proof that the pretended majority for Mr. Cannon does not consist of such votes." This is a most remarkable view of the law to be entertained by an aspirant to a seat in Congress. No board of canvassers can ever be absolutely certain that the majority of any candidate does not consist of illegal votes, without extrinsic proof which is not merely presumptive but absolutely conclusive. But the absence of such conclusive proof does not make the election void. It is an impossibility that any county returns should furnish conclusive proof of the legality of any votes. The proof which these returns afford is not conclusive, but presumptive. Upon this presumptive proof the canvassers must act. They can resort to no other. It is for them conclusive. They must award the credentials to the candidate shown by the returns to have been elected. In the House the case is different. The House may, in a contest of protest inquire into and pass upon the title to a seat; but even in the House the credentials will be presumptive evidence of title, and will be decisive of the case unless overcome by counter proof. The House itself will not, in the absence of a contest, require conclusive proof. And in a contested case, a preponderance of proof will be decisive, whether the proof be or be not conclusive.

If the House in a contested case shall find that of my 18,568 votes, 17,212 were illegal, whether cast by women or by men, and that of Mr. Campbell's 1,357 none were illegal, the election will not be rendered void, but the seat will be awarded to Mr. Campbell. But if the House shall not find that so many illegal votes were cast for me, it will confirm my title to the seat, whatever assertions Mr. Campbell may see fit to make in the impeachment of that title. Of the question presented in this branch of Mr. Campbell's protest, the Governor and Secretary, as canvassers, obviously have no shadow of jurisdiction.

Having answered all the propositions upon which Mr. Campbell bases his protest against an award of the certificate of election to me, and his demand of an award of the certificate of election to himself, I respectfully submit that a returned majority of 17,211 votes, in a total vote of 19,825, gives me a title to the credentials which cannot be overridden by the Gover-

XIII

nor under any of the pretexis suggested by Mr. Campbell, without the grossest violation of law and of official duty.

GEORGE Q. CANNON.

WASHINGTON, D. C., Dec. 30, 1880.

Oral arguments on the points involved were made by Hon. John R. McBride for Mr. Campbell, and by Hon. W. H. Hooper and John T. Caine, Esq., for Mr. Cannon.

The following certificates of the Clerk of the Third Judicial District were filed by Mr. Campbell:

UNITED STATES OF AMERICA, }
TERRITORY OF UTAH, } ss.
COUNTY OF SALT LAKE. }

I, O. J. Averill, Clerk of the District Court for the Third Judicial District, sitting in and for the county and Territory aforesaid, do hereby certify that I have made a diligent search of all the records of said Third Judicial District Court as well as of all the records of the First Judicial District Court of said Territory, in my office, and in my custody from the organization of said Court, Oct. 6, 1851, up to the present time, and that I am unable to find any record, in any of said records, of the admission of George Q. Cannon to become a citizen of the United States of America, or any record or order of said Court authorizing the Clerk of said Third District Court, or of said First District Court, to issue a certificate of citizenship to him, said George Q. Cannon.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court this 6th day of January, A. D. 1881.

[SEAL.]

O. J. AVERILL, *Clerk.*

By H. G. McMILLAN, *Deputy Clerk.*

FOURTH DAY, DECEMBER 7TH.

Court met pursuant to adjournment, officers all present.
Journal read.

R. T. Burton, Deputy Marshal, made return for the summons issued in the case of C. Vrohis & Co. vs. Robert Caldwell, and W. P. Reynolds vs. Alfred B. Lambson, and the subpoenas issued in the case of the People vs. William Sullivan, all endorsed duly served.

Clerk issued five subpoenas for witnesses before United States Grand Jury, returnable forthwith.

Dimmick B. Huntington was appointed by M. Holman, United States District Attorney, Assistant Interpreter for the Indians, to interpret both before the United States Grand Jury and Court, and he appeared before the Clerk and was duly sworn in as such Interpreter.

The United States Grand Jury not being ready to make any presentments, the Court adjourned until the following morning at eleven o'clock.

LEO SHAVER, *Judge.*

TERRITORY OF UTAH, }
COUNTY OF SALT LAKE. } ss.

I, O. J. Averill, Clerk of the District Court for the Third Judicial District, sitting in and for the county and Territory aforesaid: Do hereby certify that the above and foregoing is a full, true and perfect copy of the Journal and Minute Book and all entries therein made and appearing on the seventh (7th) day of December, A. D. 1854, of the First Judicial District Court of the Territory of Utah, as the same appears of record in my office, on page No. 216 of the Journal of said First District Court, and further that

XIV

I am the lawful custodian of said record, and authorized by law to certify the same.

In witness whereof, I have hereunto set my hand and affixed the seal of said Third Judicial District Court of Utah Territory this 5th day of January, A. D. 1881.

[SEAL.]

O. J. AVERILL, *Clerk.*

By H. G. McMILLAN, *Deputy Clerk.*

There was also presented for inspection the book of Clerk's certificates of declarations of intention to become citizens, and certificates of citizenship, in which appears what purports to be a copy of the certificate and which is claimed to be the naturalization of Mr. Cannon. Also a reply to the answer of Mr. Cannon, signed Allen G. Campbell, by John R. McBride, attorney, which reply is as follows:

To the Governor of Utah Territory:

The law in force in this Territory at the time of George Q. Cannon's alleged naturalization required:

First—That a naturalization only could take place in one of the District Courts. See law of Utah Compilation of 1855. Page 22.

Second—A statement of the proof in which the person was admitted "shall be stated and set forth * * in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.", (4th P. Sec. 2, Nat. Laws—Ib. p. 23.)

Third—The third section of the "Act in relation to the judiciary (p. 29, Utah Comp. Laws of 1855) required the clerk to keep a record of the proceedings of the Court under the direction of the Judge. He shall from time to time read over all the entries therein in open court, which when correct shall be signed by the Judge"—

These sections, both of the United States and the Utah Statutes, make it the duty of the Court and the clerk to make a record of the proceedings, and that record must, to be authentic, be signed by the Judge of the Court, and if a record is not so made in naturalization cases, the party "shall not be deemed a citizen." In the case of George Q. Cannon there is no such record. On the contrary, it appears from a certified copy of the actual record of the court at the time when he claims to have been naturalized, that no such proceeding took place, and it further appears that no such naturalization proceedings took place either then or at any time.

The pretended certificate does not purport to be an exemplification of any record, and it appears that it was the common practice of the clerks to issue naturalization papers here without the proceeding being had before the court or judge at all. They were habitually peddled out over the country to anyone who would pay for them. Such a certificate or statement by a clerk as to the person holding it being a citizen is no more proof of the fact than if he had certified to the holder's solvency, his general reputation or as to the place of his birth. The law gives no effect to such a certificate—it is void on its face.

A clerk may make a copy of a record of the court and certify that it is a true copy, but no instance is known of a clerk being permitted to certify that certain things were done in court—the record must speak for itself—and he authenticates the record. Here then is no record and never has been, and as to this particular part the record shows that the clerk here stated a fact to exist which did not then, nor does it now exist.

A clerk might as well issue an execution without any judgment having been rendered against the party. It affords no presumption even of the existence of the fact. To prove the existence of any judgment it must be exemplified and then properly authenticated; in other words, where the record

is made the evidence, no statement or certificate of it is proof. The authenticated copy of it with the signature of the judge and the certificate of the clerk is the only proof which the law recognizes and without which the statute says the party "shall not be deemed to be a citizen."

Mr. Cannon is disqualified to receive votes by a Territorial law, Section 3 page 87, Compiled Laws of 1876.

Every vote cast for him is in the language of Mr. Cushing, "thrown away" and cannot be counted. Cash L. and Pr., page 66, sec. 176, 178.

The result is that Mr. Campbell is entitled to the certificate of election as Delegate to Congress.

ALLEN G. CAMPBELL.

By JOHN R. MCBRIDE, Attorney.

Mr. Caine for Mr. Cannon, filed a printed answer, which is made part of this paper. (See above.)

Mr. McBride, for Mr. Campbell, cites the following authorities:

Sec. 3, Chap. 1st, page 29 of Laws of Utah, 1851-1872, Par. 4, Sec. 2, page 23, Laws of Utah, 1851-1872.

Spratt vs. Spratt, 4th Peters, 6th Cranch, page 176; Compiled Laws of Utah, page 87; 7th Mass., pages 523, 527; Cushing's Law and Practice of Legislative Assemblies, page 66 and pages 51 and 52.

Mr. Caine, for Mr. Cannon, cites the following authorities:

Act of Congress organizing the Territory of Utah, passed Sep. 9, 1850.

McCrory's American Law of Elections, pages 151, 167.

It is not for me to go behind the returns, to defend the statute conferring suffrage upon women in the Territory, or to consider any of the questions growing out of an exercise of suffrage.

Call it ministerial, or judicial, or quasi-judicial, it is left only for me to ascertain the law, and to do that which it directs me to do.

The Act of Congress passed September 9th, 1850, establishing the Territory of Utah, in referring to the election of Delegate to Congress, says: "The person having the greatest number of votes shall be declared by the Governor, duly elected, and a certificate thereof shall be given accordingly."

The Act of Congress approved June 8, 1872, enacts that the qualifications of voters and of holding office shall be such as the legislatures of Territories hereafter to be organized, as well as those already organized, may prescribe, subject, nevertheless, to the following restrictions; namely: 1st. "The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years, and by those above that age who have declared on oath before a competent court of record their intention to become such, and have taken an oath to support the Constitution of the United States," etc.

Congress therein explicitly determines that "person," as used in the act of 1850, means a "citizen." Under this law the Legislature of Utah has restricted the right of voting and of holding office to citizens of the United States, excluding those who have merely declared their intentions to become such.

The certificate of the Clerk of the Third District Court, he having the custody of the records, and having examined them, explicitly states, under his seal, that from the organization of the court to the present time, he is "unable to find any record, in any of said records, of the admission of George Q. Cannon to become a citizen, or any record or order of said court authorizing the clerk of said Third District, or of said First District Court to issue a certificate of admission to citizenship to him, said George Q. Cannon." This must decide my action. The certificate of W. I. Appleby, clerk of the First District Court, is claimed to be the naturalization of Mr. Cannon.

The following is a copy of this paper:

XVI

CERTIFICATE OF CITIZENSHIP OF ONE WHO ARRIVED IN THE UNITED STATES BEFORE HE WAS EIGHTEEN.

UNITED STATES OF AMERICA, }
TERRITORY OF UTAH, } ss.
GREAT SALT LAKE COUNTY. }

United States First District Court for the Territory of Utah:

Be it remembered, that on the seventh day of December, A. D. 1854, George Q. Cannon, a subject of Queen Victoria, made application and satisfied the court that he came to reside in the United States before he was eighteen years of age; and thereupon, the said George Q. Cannon appeared in open court, and was sworn in due form of law, and on his oath did say, that for three years last past, it has been his bona fide intention to become a citizen of the United States, and to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever; and thereupon, the court being satisfied by the oaths of Joseph Cain and Elias Smith, two citizens of the United States, that the said George Q. Cannon, for one year last past, has resided in this Territory, and for four years previous thereto he resided in the United States—that during that time he has behaved as a man of good moral character—that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, admitted him to be a citizen of the same. And thereupon, the said George Q. Cannon was in due form of law sworn to support the Constitution of the United States, and absolutely and entirely to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he heretofore has been.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this seventh day of December, one thousand eight hundred and fifty-four and of the Independence of the United States the seventy-ninth.

W. I. APPLEBY, *Clerk.*

TERRITORY OF UTAH, }
SALT LAKE COUNTY, } ss.

I, Ezra T. Sprague, Clerk of the Supreme Court of said Territory of Utah, do hereby certify that the annexed and foregoing is a full, true and correct copy of an instrument contained in a certain book received by me from my predecessor in said office of Clerk, and which remains deposited in my office.

In testimony whereof, I have hereunto set my hand and the seal of said court, this 7th day of January, A.D. 1881.

E. T. SPRAGUE, *Clerk.*

The record of the court is the only means of ascertaining its judgments and orders. The clerk's certificate of the judgments and orders of a competent court, and not his individual statements without seal, is the only guide in all cases, and therefore must be in this case. The records of the court fail to make Mr. Cannon a citizen, and he, as I, must stand by the record. Mr. Cannon, under any other circumstances, might, perhaps, acquire citizenship by the time his term of office commences, but it is charged in Mr. Campbell's protest, and not denied in Mr. Cannon's answer, that he is living in polygamy, a violation of the act of Congress of 1862 making it a crime. This being the case, he is not "well disposed towards the Govern-

XVII

ment of the United States." Therefore, he cannot, in good faith, take the oath of naturalization, and the courts of this Territory uniformly enforce this rule. The House of Representatives, *Congressional Record* of June 16th, 1874, page 5046, affirmed the same principle in House bill 3673, providing that delegates in Congress should be 25 years of age, seven years a citizen, and an inhabitant of such Territory, "and no such person who is guilty of bigamy or polygamy shall be eligible to a seat as such delegate."

It having been shown that Mr. Cannon is not a citizen, and that he is incapable of becoming a citizen, I cannot, under the law, certify that he is "duly elected," and Mr. Campbell having received the greatest number of votes cast for any citizen, was therefore duly elected and must receive the certificate accordingly.

I am aware that my action on this question is not final. The House is the judge of the qualifications and election of its members, but in the discharge of my sworn duty under the law to give the certificate to the person duly elected, I cannot do otherwise than give it to Allen G. Campbell.

ELI H. MURRAY.

THE CERTIFICATE.

UNITED STATES OF AMERICA, }
TERRITORY OF UTAH, } ss.
EXECUTIVE OFFICE. }

I, Eli H. Murray, Governor of the Territory of Utah, do declare and certify that at a regular election for Delegate to the Forty-seventh Congress, held in said Territory on the first Tuesday after the first Monday in November, A.D. 1880, returns whereof were opened in my presence by the Secretary of the Territory, Allen G. Campbell was the person, being a citizen of the United States, having the greatest number of votes, and was therefore duly elected as Delegate from said Territory to said Congress, and I do give this certificate accordingly.

In testimony whereof, I have hereunto set my hand and caused
[L.S.] the Great Seal of the Territory to be affixed. Done at Salt
Lake City, this eighth day of January, A.D. 1881.

ELI H. MURRAY, Governor.

By the Governor:

ARTHUR L. THOMAS,
Secretary of Utah Territory.]

CANNON'S NOTICE OF CONTEST.

WASHINGTON, D. C., January 20, 1881.

Allen G. Campbell, Esq.:

SIR—I have the honor to notify you that I shall contest your right to hold a seat in the House of Representatives of the Forty-seventh Congress of the United States, as Delegate from the Territory of Utah, and also your right either to be sworn or enrolled, or to hold a certificate of election as such Delegate on the following grounds:

1. That the returns of the election of Deleaga'e to the Forty-seventh Congress of the United States, held on the 2d day of November, 1880, in the several counties of the Territory of Utah, which were prepared and forwarded to the Secretary of the Territory, under Sections 23 and 24 of the Compiled Laws of the Territory of Utah, copies of which returns, marked respectively A. B. C. D, etc., are hereto annexed, showed, as the fact was, that 18,568 votes were legally cast for me at said election; that only 1,357 votes were cast for you, and that only eight votes were cast for all other candidates, and that I was, therefore, legally elected to said office of Delegate from the Territory of Utah in the Forty-seventh Congress, and was also entitled to receive the certificate of election, and to be enrolled and sworn as such Delegate.

2. That said returns showed, as the fact was, that you received less than one-thirteenth of the votes legally cast at the said election, and therefore were not entitled to hold the said office of Delegate from the Territory of Utah in the Forty-seventh Congress, or to be enrolled or sworn as such Delegate, or to receive such certificate of election to said office,

3. That the action of the Governor of the Territory of Utah in the withholding the certificate of election from me, and giving it to you, was illegal and fraudulent.

Very respectfully,

GEORGE Q. CANNON.

EXHIBIT "A."

COUNTY AND PROBATE CLERK'S OFFICE, }
BEAVER COUNTY, BEAVER CITY, UTAH. }
Nov. 5, 1880.

UNITED STATES OF AMERICA, }
TERRITORY OF UTAH, } ss.
COUNTY OF BEAVER. }

I, William Fotheringham, County Clerk of Beaver County, do hereby certify that at a general election held in the several precincts of Beaver

XIX

County, on the second day of November, A. D. 1880, for the purpose of electing a Delegate to Congress, the results of said election are as follows, to-wit :

FOR DELEGATE TO CONGRESS.
Geo. Q. Cannon.....515 votes.

FOR DELEGATE TO CONGRESS.
Allen G. Campbell.....222 votes.

FOR DELEGATE TO CONGRESS.
J. R. McBride.....1 vote.

Witness my hand, and the seal of the County Court of Beaver
County, this Fifth day of November, A. D. 1880.

[SEAL.]

WILLIAM FOTHERINGHAM, *County Clerk.*

EXHIBIT "B."

Returns of the General Biennial Election held in the various precincts of Box Elder County, Utah Territory, on Tuesday, Nov. 2, 1880:

FOR DELEGATE TO CONGRESS.
Geo. Q. Cannon received.....855 votes.
Allen G. Campbell received.....73 votes.

I, James Bywater, do hereby certify that the foregoing is a full, true, and correct copy and abstract of the returns of the General Biennial Election held in Box Elder County, Utah, on Tuesday, the Second day of November, A. D. 1880, as appears of record in my office, showing the offices to be filled, the persons voted for, and the number of votes each person received.

Witness my hand and seal of court, at Brigham City, this
Seventeenth day of November, A. D. 1880.

[SEAL.]

JAMES BYWATER, *County Clerk.*

EXHIBIT "C."

OFFICE OF CLERK OF COUNTY COURT FOR CACHE)
COUNTY, IN THE TERRITORY OF UTAH,)
LOGAN CITY, NOV. 3, A. D. 1880. }

Abstract of votes polled in Cache County, on Tuesday, Nov. 2d, A. D. 1880, for Delegate to Congress for the Territory of Utah;

FOR DELEGATE TO CONGRESS.
George Q. Cannon received.....1,787 votes.

FOR DELEGATE TO CONGRESS.
Allen G. Campbell received.....6 votes.

TERRITORY OF UTAH, }
COUNTY OF CACHE. } ss.

I hereby certify the foregoing to be a correct copy of the names of the persons voted for, and the number of votes each has received for Delegate to Congress, at the election held November 2d, A. D. 1880, in Cache County.

[SEAL.]

JAMES T. HAMMOND,

Clerk of County Court for Cache County.

By W. W. MAUGHAN, *Deputy Clerk.*

To the Hon. Secretary of the Territory.

EXHIBIT "D."

ABSTRACT OF ELECTION.

Names of persons voted for and the offices they are intended to fill.	Names of precincts and number of votes polled in each.
FOR DELEGATE TO CONGRESS.	South Precinct.
George Q. Cannon.....	91 votes.
Allen G. Campbell.....	3 votes.
	West Precinct.
George Q. Cannon.....	45 votes.
Allen G. Campbell.....	1 vote.
	Bountiful Precinct.
George Q. Cannon.....	170 votes.
Allen G. Campbell.....	8 votes.
	Centreville Precinct.
George Q. Cannon.....	88 votes.
Allen G. Campbell.....	2 votes.
	Farmington Precinct.
George Q. Cannon.....	137 votes.
Allen G. Campbell.....	6 votes.
	Kaysville Precinct.
George Q. Cannon.....	247 votes.
	South Weber Precinct.
George Q. Cannon.....	21 votes.
	Hooper Precinct.
George Q. Cannon.....	51 votes.
Allen G. Campbell.....	6 votes.
	Total votes received.
George Q. Cannon.....	850 votes.
Allen G. Campbell.....	26 votes.

TERRITORY OF UTAH, }
COUNTY OF DAVIS. } ss.

I, Joseph Barton, County Clerk of the County of Davis, Territory of Utah, do hereby certify that the above and foregoing is a full, true, and correct abstract of the returns of an election held in the several precincts, in said Davis County, on Tuesday, the Second day of November, A. D. 1880,

XXI

and the names of the persons voted for, and the number of votes each has received for Territorial Offices.

In witness whereof, I have hereunto set my hand and affixed the seal of the County Court of said County, the 3d day of November, A. D. 1880.

[SEAL.]

JOSEPH BARTON, *County Clerk.*

EXHIBIT "E."

CASTLE DALE, EMERY COUNTY, UTAH TER., }
November 8, 1880. }

Hon. A. L. Thomas, Secretary of Utah, Salt Lake City, Utah Ter.:

No election returns from Emery County.

EMANUEL BAGLEY.

EXHIBIT "F."

Abstracts of the election returns of the Biennial Election held in the various precincts of Iron County, Utah Territory, November 2d, A. D. 1880, for the purpose of electing a Delegate to Congress:

	No. of votes polled.
Parowan Precinct for Geo. Q. Cannon.....	118
“ “ “ A. G. Campbell.....	4
Cedar “ “ Geo. Q. Cannon.....	121
Panguitch “ “ “ “.....	91
Paragoonah “ “ “ “.....	49
Escalante “ “ “ “.....	58
Cannonville “ “ “ “.....	18
Hillsdale “ “ “ “.....	19
Summit “ “ “ “.....	17

Making a total of 495 votes polled in Iron County, 491 for George Q. Cannon, and 4 for A. G. Campbell.

We, Edwin Dalton, Probate Judge, and John E. Dalley, County Clerk in and for Iron County, Utah Territory, do hereby certify that the foregoing is a full, true, and correct abstract of the election returns of the Biennial Election held in the various precincts of Iron County, Utah Territory, Nov. 2d, A. D. 1880, for the purpose of electing a Delegate to Congress.

In testimony whereof we have hereunto set our hands, and affixed the seal of the County Court of Iron County, this Tenth day of November, A. D. 1880.

[SEAL.]

EDWARD DALTON, *Probate Judge.*
JOHN E. DALLEY, *County Clerk.*

XXII

EXHIBIT "G."

Abstract of the General Election for a Delegate from the Territory of Utah to the Forty-seventh Congress of the United States, held in Juab County, Utah Territory, on Tuesday, the Second day of November, 1880.

Name of Precinct.	Number of votes polled for George Q. Cannon.	for Allen G. Campbell.
Nephi	299	1
Levan	73	
Mona	49	
Tintic		48
Total number of votes	421	49

TERRITORY OF UTAH, }
COUNTY OF JUAB. } ss.

I, William A. C. Bryan, Clerk of the County Court of Juab County, in Utah Territory, do hereby certify that the foregoing is a true and correct abstract of the General Election held in said County on Tuesday, the Second day of November, A. D. 1880.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the County Court of said County, at my office in Nephi, this Fourth day of November, A. D. 1880.

[SEAL.]

WM. A. C. BRYAN.

EXHIBIT "H."

Abstract of the General Election held in Kane County, Utah Territory, November 2d, A. D. 1880.

FOR DELEGATE TO CONGRESS.

George Q. Cannon.....607 votes.

I hereby certify that the foregoing is a true and correct copy of the returns of the election held in Kane County, Utah, on the Second day of November, A. D. 1880, as appears by the General Abstract of the returns of said election, now on file in my office.

Witness my hand and seal of the County Court of Kane County, U. T., this Ninth day of November, A. D. 1880.

[SEAL.]

MARTIN SLACK, *County Clerk.*

EXHIBIT "I."

Abstract of the election held in Millard County, November 2d, 1880, The number of votes for the different candidates were as follows:

FOR DELEGATE TO CONGRESS.

George Q Cannon, ...	510 votes,
A. G. Campbell.....	34 "
Total.....	544 "

XXIII

I hereby certify that the forgoing is a correct representation of the votes cast at the election held in Millard County, U. T., on the Second day of November, A. D. 1880, as appears by certified returns filed in my office.

Witness my official signature and seal of Millard County, in my office in Fillmore City, this Sixth day of November, A. D. 1880.

[SEAL.]

C. ANDERSON,
Clerk of the County Court, Millard County, U. T.

EXHIBIT "J."

Abstract of General Election Returns of Morgan County, Nov. 2, 1880.

Name of Office—

DELEGATE TO CONGRESS.

Names of person voted for.

Canyon Creek Precinct	George Q. Cannon	80	votes.
Morgan City	"	67	"
"	Allen G. Campbell	4	"
Peterson	George Q. Cannon	34	"
Milton	"	29	"
"	Allen G. Campbell	1	"
Croyden	"	3	"
"	George Q. Cannon	21	"
Total number of votes	George Q. Cannon	231	
"	Allen G. Campbell	8	

This is to certify that the above is a true and correct copy of the Abstract of the General Election returns of Morgan County, held November 2, 1880.

In testimony whereof I have hereunto set my official signature and the seal of Morgan County Court, this 4th day of Nov. 1880.

[SEAL.]

S. FRANCIS, SR., County Clerk.

EXHIBIT "K."

Abstract of the returns of the election held in Pinte County, Utah Territory, November 2, A. D. 1880.

FOR DELEGATE TO CONGRESS:	Bullion Precinct,
Allen G. Campbell received	21 votes.
FOR DELEGATE TO CONGRESS.	
George Q. Cannon received	3 votes.
FOR JUSTICE OF THE PEACE.	
Charles B. Egan received	24 votes.
FOR DELEGATE TO CONGRESS.	Circleville Precinct.
George Q. Cannon received	37 votes.

XXIV

FOR DELEGATE TO CONGRESS.

A. G. Campbell..... 5 votes.

FOR DELEGATE TO CONGRESS.

Koosharem Precinct.

George Q. Cannon received 37 votes.

FOR DELEGATE TO CONGRESS.

Fremont Precinct.

George Q. Cannon received.....28 votes.

Total votes received by George Q. Cannon.....105 votes.

“ “ “ Allen G. Campbell..... 26 “

“ “ “ Chas. B. Egan..... 24 “

I do hereby certify that the foregoing is a true and correct abstract of the returns of the election held in Piute County, Utah Territory, November 2d, A. D. 1880, at which election the persons above named received the number of votes placed in figures opposite their respective names.

Witness my hand and seal of Office. Done at Junction, Piute County, Utah Territory, this 6th day of November, A. D. 1880.

[SEAL.]

C. E. BOLTON,
County Clerk, Piute County.

EXHIBIT “L.”

RANDOLPH, Nov. 5, 1880.

Hon. A. L. Thomas, Secretary of Utah:

DEAR SIR—I herewith send you election returns from Rich County, Utah.

FOR DELEGATE TO CONGRESS.

George Q. Cannon.....207 votes.

Special election at Laketown Precinct—

FOR JUSTICE OF THE PEACE.

Hugh Findlay..... 37 votes.

TERRITORY OF UTAH, }
COUNTY OF RICH. } ss.

I, William Rex, County Clerk in and for said County and Territory, do hereby certify that the above is a correct copy of the returns of election held on the 2d inst., as is shown by the abstract of returns now on file in my office.

[SEAL.]

WM. REX, County Clerk.

XXV

EXHIBIT "M."

Triplicate.

General Abstract of the Delegate Election, November 2, 1880.

Names of Precincts.	Names of Candidates.	No. of votes.
1st Precinct, Salt Lake City,	George Q. Cannon.....	434 votes.
" " " "	Allen G. Campbell.....	31 "
2d " " " "	George Q. Cannon.....	487 "
" " " "	Allen G. Campbell.....	45 "
3d " " " "	George Q. Cannon.....	508 "
" " " "	Allen G. Campbell.....	6 "
4th " " " "	George Q. Cannon.....	340 "
" " " "	Allen G. Campbell.....	21 "
5th " " " "	George Q. Cannon.....	415 "
" " " "	Allen G. Campbell.....	56 "
" " " "	Robert Williams	1 "
Sugar House Precinct,	George Q. Cannon.....	60 "
Mountain Dell " "	" "	13 "
Farmers " "	" "	52 "
East Mill Creek " "	" "	49 "
Mill Creek " "	" "	127 "
Butler " "	" "	25 "
Granite " "	" "	18 "
Big Cottonwood " "	" "	86 "
South Cottonwood " "	" "	129 "
" " " "	Allen G. Campbell.....	9 "
Union " "	George Q. Cannon.....	43 "
Sandy " "	" "	43 "
" " " "	Allen G. & Campbell.....	2 "
" " " "	Willis Clarke	1 "
" " " "	Isaac Harrison	1 "
Little Cottonwood " "	Allen G. Campbell.....	23 "
Draper " "	George Q. Cannon.....	95 "
" " " "	Allen G. Campbell.....	1 "
Riverton " "	George Q. Cannon.....	30 "
South Jordan " "	" "	68 "
West Jordan " "	" "	114 "
North Jordan " "	" "	60 "
Ft. Herriman " "	" "	51 "
Bingham " "	" "	1 "
" " " "	Allen G. Campbell.....	49 "
Brighton " "	George Q. Cannon.....	21 "
Pleasant Green " "	" "	24 "
Hunter " "	" "	7 "
North Point " "	" "	22 "
Granger " "	" "	11 "
Total.....	George Q. Cannon.....	3333
"	Allen G. Campbell.....	243
"	Robert Williams	1
"	Willis Clark	1
"	Isaac Harrison	1
Grand Total.....		3579

XXVI

TERRITORY OF UTAH, }
COUNTY OF SALT LAKE. } ss.

I, D. Bockholt, Clerk of the County Court of Salt Lake County, U. T., do hereby certify that the foregoing exhibit is a full, true, and complete abstract of the election lists returned from the several precincts of Salt Lake County, and filed in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the County Court, at my office in Salt Lake City, this 4th day of November, 1880.

[SEAL.]

D. BOCKHOLT,
Clerk of the County Court, Salt Lake County.

EXHIBIT "N."

Returns of an election held in Sanpete County, Utah Territory, on the Second day of November, A. D. 1880, for the purpose of electing a Delegate to Congress for Utah Territory.

George Q. Cannon received.....	1673 votes.
Allen G. Campbell "	43 "
Joseph S. Rawlins "	1 "

I hereby certify, that the foregoing is a true abstract of the election as above set forth, as it appears from the returns of the various precincts of said county, now in my office.

Witness my hand and the seal of the County Court of Sanpete County, Utah Territory, this 4th day of November, A. D. 1880.

[SEAL.]

WILLIAM T. REID,
Clerk of the County Court of Sanpete County, Utah.

EXHIBIT "O."

November Election Returns, 1880.

Abstract of Election Returns from Sevier County, Utah Territory:

Office to be filled.	Candidate.	Total No. Votes.
Delegate to Congress.....	Hon. Geo. Q. Cannon.....	568 votes.
	Allen G. Campbell.....	5

Total votes polled..... 573

TERRITORY OF UTAH, }
COUNTY OF SEVIER, } ss.

I hereby certify that the above is a true and correct abstract of the

XXVII

election returns on file in my office of the November election, held November the Second, 1880.

Witness my hand and seal of the Court, this Eighteenth day of November, A. D. 1880.

[SEAL.]

JNO. A. HELLSTROM, *County Clerk.*

EXHIBIT "P."

TERRITORY OF UTAH, }
COUNTY OF SUMMIT. }

Election of Delegate to Congress from the Territory of Utah, held in the County of Summit, November 2, 1880.

The votes polled were as follows:

For Geo. Q. Cannon.....	433 votes.
" Allen G. Campbell.....	175 "
" E. D. McKim.....	3 "

I, the undersigned, County Clerk in and for the County of Summit, U. T., do hereby certify that the above is a true and correct list of the votes polled in Summit County on the Second day of November, A. D. 1880, for Delegate to Congress, according to the returns from the various precincts now on file in my office.

In witness whereof, I have hereunto set my hand and affixed the County seal, at my office in Coalville City, this Eighth day of November, A. D. 1880.

[SEAL.]

ROBERT SALMON, *County Clerk.*

EXHIBIT "Q."

COUNTY CLERK'S OFFICE, }
TOOELE CITY AND COUNTY, U. T., }
November, 1880.

Hon. A. L. Thomas, Secretary of Utah:

DEAR SIR—Permit me to report to you the result of the Biennial election for Delegate to Congress, held on the Second day of November, A. D. 1880, in Tooele County, Utah Territory:

FOR DELEGATE TO CONGRESS.

George Q. Cannon received.....	614 votes.
Allen G. Campbell received.....	80 "

I hereby certify that the above is a true report of the votes polled at said election, as fully appears from the returns from the various precincts of said county, now on file in my office.

Witness my official signature and seal at my office, the day and year first above written.

[SEAL.]

F. M. LYMAN, *County Clerk,*

XXVIII

EXHIBIT "Q."

Abstract of the votes polled at an election held in Utah County, Territory of Utah, on Tuesday, the Second day of November, A. D. 1880, for Delegate to the Forty-seventh Congress of the United States, for the Territory of Utah.

Precinct.	No. of votes polled for George Q. Cannon.	No. of votes polled for Allen G. Campbell.	Total number of votes polled in each Precinct.
Provo.....	503.....	13.....	516
Springville.....	360.....	28.....	388
Spanish Fork.....	375.....	3.....	378
Salem.....	79.....		79
Payson.....	303.....	4.....	307
Benjamin.....	23.....	9.....	32
Spring Lake.....	40.....		40
Santaquin.....	99.....		99
Goshen.....	87.....	2.....	89
Fairfield.....	25.....		25
Cedar Fort.....	60.....		60
Lehi.....	237.....	1.....	238
Alpine.....	73.....		73
American Fork.....	232.....	2.....	234
Pleasant Grove.....	225.....	2.....	227
Thistle Valley.....	16.....		16
Totals.....	2736.....	64.....	2801

TERRITORY OF UTAH, }
COUNTY OF UTAH. } ss.

I, Wilson H. Dusenberry, Clerk of the County Court of Utah County, Territory of Utah, hereby certify that the foregoing is a full, true, and correct copy of the original abstract of the votes polled at an election held in the County of Utah, Territory of Utah, on Tuesday, the Second day of November, A. D. 1880, for Delegate to the Forty-Seventh Congress of the United States for the Territory of Utah.

Witness my hand and the seal of said Court at Provo City, this
4th day of November, A. D. 1880.

[SEAL.]

WILSON H. DUSENBERRY,
Clerk of the County Court.

EXHIBIT "S."

TERRITORY OF UTAH, }
COUNTY OF WASATCH, } ss.

I, the undersigned, County Clerk in and for the County of Wasatch, in the Territory of Utah, hereby certify that the following is a true abstract of the returns from the several election precincts in said County, viz.:

XXIX

Heber Precinct—	
For George Q. Cannon, Delegate to Congress	81 votes.
Midway Precinct—	
Cannon, Delegate to Congress.....	60 votes.
Charleston Precinct—	
Cannon, Delegate to Congress.....	36 votes.
Wallsburgh Precinct—	
Cannon, Delegate to Congress.....	36 votes.

Total.....213
And 7 for Campbell.

[SEAL.]

CHAS. SHELTON, *County Clerk.*

EXHIBIT "T."

Abstract of Election returns of the General Election, November 2, 1880.

FOR DELEGATE TO CONGRESS.

	George Q. Cannon.	Allen G. Campbell.
St. George.....	324	
Washington.....	115	
Leeds	44	
Silver Reef.....	8	176
Price.....	17	
Santa Clara.....	48	
Gunlock.....	36	
Pine Valley.....	52	
Pinton	32	
Hebron.....	32	
Total.....	713	176

TERRITORY OF UTAH,
COUNTY OF WASHINGTON. } ss.

I, Adolphus R. Whitehead, County Clerk of Washington County, hereby certify the foregoing to be a true and correct abstract of the returns of the election held in Washington County, Utah Territory, Tuesday, November 2d, A. D. 1880.

Witness my hand and the seal of said county, this Eighth day of November, A. D. 1880.

[SEAL.]

ADOLPHUS R. WHITEHEAD, *County Clerk.*

EXHIBIT "U."

COUNTY CLERK'S OFFICE,
WEBER COUNTY, UTAH,
L. M. RICHARDS, *Clerk.*
OGDEN, NOV. 3, 1880. }

Hon Arthur L. Thomas, Secretary of Utah Territory:

SIR—The following are the names of the persons voted for, and the num-

XXX

ber of votes each received for the office named, at an election held in Weber County, Utah Territory, on the Second day of November, A. D. 1880, to-wit:

FOR DELEGATE TO CONGRESS.

George Q. Cannon received.....1699 votes.
Allen G. Campbell received..... 116 “

I hereby certify that the above abstract is true and correct.

Very respectfully,

[SEAL.]

L. M. RICHARDS,
Clerk County Court of Weber County.
By C. C. RICHARDS, *Deputy Clerk.*

EXHIBIT “V.”

Abstract of votes polled at Brown's Park Precinct, Uintah County, Utah, November 2, 1880.

ASHLEY, UINTAH COUNTY, UTAH TERRITORY, }
November 13, 1880. }

This certifies that at a general election held at Brown's Park Precinct, Uintah County, Utah Territory, on November 2, 1880, the whole amount of votes polled was 6.

Office to be voted for—Delegate to Congress.

Name of candidate, George Q. Cannon.

We find upon counting said votes from the returns of said election, the whole number of votes cast was six, of which George Q. Cannon received six for the office of Delegate to Congress.

We certify the above to be correct.

[SEAL.]

THOMAS BINGHAM, *Probate Judge.*
W. C. BRITT, *County Clerk.*

UNITED STATES OF AMERICA, }
TERRITORY OF UTAH, } ss.
SECRETARY'S OFFICE.

I, Arthur L. Thomas, Secretary of Utah Territory, do hereby certify that the foregoing pages, numbered one to twenty-seven inclusive, contain full, true and correct copies of all the returns received from the several counties, of the election held on the Second day of November, A. D. 1880, for Delegate to Congress, from the Territory of Utah.

Attest: My hand and the Great Seal of the Territory, this Eighth day of January, A. D. 1881.

[SEAL.]

ARTHUR L. THOMAS,
Secretary of Utah Ter.

I hereby acknowledge due service of the within notice of contest and exhibits by receiving a duplicate of within signed by contestant, this (4th) day of February, A. D. 1881.

A. G. CAMPBELL.

CAMPBELL'S REPLY.

SALT LAKE CITY, UTAH, February 26th, 1881.

George Q. Cannon, Esq.:

SIR.—To your notice of January 20th, 1881, served on me on the 4th day of the present month, to the effect that you will contest my right to hold a seat in the House of Representatives of the Forty-seventh Congress of the United States as Delegate from the Territory of Utah, etc., I have the honor to answer in respect to the facts alleged by you, and to state the grounds on which I rest the validity of my election as follows:

1. I admit that returns of the election of Delegate to the Forty-seventh Congress of the United States, held on the 2nd day of November, 1880, in the several counties of the Territory of Utah, were made to the Secretary of said Territory, of which copies are annexed to your notice and referred to therein as marked respectively, A, B, C, D, etc. But I deny that said returns showed, or that the fact was, that 18,563 votes were legally cast for you at said election, or that you were legally or otherwise elected to said office of Delegate from the Territory of Utah in the Forty-seventh Congress, or entitled to receive the certificate of election, or to be enrolled, sworn, or otherwise in any manner recognized as such Delegate. I deny that said returns showed, or that the fact was, that I received less than one-thirteenth of the votes legally cast at said election, or that I was not entitled to hold the said office of Delegate from the Territory of Utah in the Forty-Seventh Congress, or to be enrolled and sworn as such Delegate, or to receive the certificate of election to said office.

I deny that the action of the Governor of the Territory of Utah in withholding the certificate of election from you, and in giving it to me, was illegal or fraudulent.

And I allege as grounds of the foregoing denial and of my claim that my election was valid, as follows:

1. No statute, Federal or Territorial, required or authorized said returns of said election to be placed before the Governor of said Territory; or that authorized or required him to open or inspect said returns as the whole or any part of the evidence, on which he was required to determine the result of said election, and this state of the law has been judicially declared in said Territory.

2. Said returns do not disclose the names, sex or qualifications of the voters whose votes are therein aggregately stated.

3. A large number of the voters who voted for you were females, and therefore not qualified to vote for members of the Legislative Assembly in said Territory, and consequently not qualified to vote for Delegate to Congress at said election. The number of such illegal votes can only be estimated, but such votes were given in all the counties in relatively large numbers, and are an undistinguishable part of the votes mentioned in each of said returns.

4. You were not at the date of said election eligible or qualified, nor capable of being made eligible or qualified to be elected to, or to serve in, said office of Delegate, because you were born a subject of Great Britain,

and had never been naturalized as a citizen of the United States; you are not a man of good moral character; you are not attached to the principles of the Constitution of the United States, nor well disposed to the good order and happiness of the same; you have been for many years a polygamist, living and cohabiting with four women as wives, to whom you have joined yourself by a pretended ceremony of marriage; you do not loyally yield assent and obedience to the act of Congress against polygamy in the Territories; you have for many years last past publicly endeavored to incite others to violate that statute in the Territory of Utah—therefore all the votes given for you at said election are void.

5. At the time of said election on the second day of November, 1880, you were known throughout the Territory of Utah to be an alien and not eligible to said office of Delegate. All the persons voting for you were aware, and had full notice, that you were an alien unnaturalized, and disqualified to hold any office under the laws of the United States, or of any of the Territories thereof.

6. I am a native born citizen of the United States and qualified by age and residence in said Territory to be elected at said election to said office of Delegate to the House of Representatives of the Forty-seventh Congress of the United States, and besides eight scattering votes cast at said election, I received all the legal votes given at said election for said office of Delegate in the Forty-seventh Congress from the Territory of Utah; that on the 8th day of January, 1881, the Governor of said Territory, in pursuance of the statute in such case made and provided, and in the due and regular exercise of the power in him vested, did declare and certify under his hand and the great seal of said Territory, that I was the person having the greatest number of votes, and therefore duly elected as Delegate from said Territory to said Congress.

Respectfully Yours,
A. G. CAMPBELL.

I hereby admit service of the within and foregoing notice to me directed by a copy delivered to me personally at Washington this the fifth day of March, A. D. 1881.

GEO. Q. CANNON.

CANNON'S EVIDENCE.

May 28th, 1881.

Elias Smith sworn for George Q. Cannon.

EXAMINED BY ARTHUR BROWN, ESQ.

Q. Are you a citizen of the United States? A. I am.

Q. Native born or naturalized? A. Native born.

Q. How many years have you lived in the Territory of Utah? A. Nearly thirty.

Q. Are you acquainted with George Q. Cannon? A. I am.

Q. How many years have you been acquainted with him? A. I think I made my first acquaintance with him in the year 1843.

Q. Whereabouts? A. In the County of Hancock, State of Illinois, City of Nauvoo.

Q. How long did you know him there? A. I knew him there from that time until the spring of 1846, the exact date I don't remember when we parted.

Q. Did you know him here in Utah? A. I did.

Q. When did you first know him here? A. I first saw him here to the best of my remembrance in the month of November or December, 1854.

Q. When did you yourself first come to Utah? A. I came to Utah in 1851—September 28th.

Q. Did you in 1854 go with him to the District Court then presiding over Salt Lake County? A. To the best of my remembrance I did.

Q. Who was the Judge then presiding over that District Court? A. That is a matter I am not as positive about as I wish I was. I will have to refer to records.

Q. Well, what would be your recollection now? A. From my recollection, and from the information I obtained and derived within the last two or three years—it is a matter I had not thought anything about then—my impression is that Leonidas Shaver was. I once stated to the best of my knowledge that Judge Styles was here, but that remark was based upon a matter connected with Judge Snow's history here, I was of the opinion that he succeeded him.

Q. Your impression is that Judge Shaver was then here? A. Yes, sir.

Q. Are you positive you went with Cannon to Court? A. That I am positive of.

Q. What would be your impression about its being on or about the 7th of December, 1854? My impression is from the information I have derived from looking at records in my possession and records I have made myself, that it was not far from that time, but the exact date I cannot find.

Q. Of course you would not remember the exact date from your recollection? A. No sir.

Q. But your recollection would be that it was in the neighborhood of that time? A. Yes, sir; it was a short time after he arrived from California.

Q. On that day when you went with Cannon, was Court open doing business? A. It was.

Q. What was your errand with Mr. Cannon there that day? A. Mr. Cannon on his arrival here from California —

Campbell's counsel object to the form of the question—let him state what he did.

Q. State what was your errand there—what did you go for? A. I went there as a witness for Mr. Cannon, that I had been acquainted with him from boyhood when he came to this country.

Q. You went there as a witness to his naturalization? A. Yes sir.

Q. When you arrived in Court, what did you do, or what was done in your hearing relative to that matter?

Objected to, as what was done in Court must be a matter of record, and cannot be proved by any parol testimony.

A. I arrived there in Court, and the usual proceedings —

Judge McBride for Campbell—State what was done?

A. Mr. Cannon presented himself there to become a citizen of the United States, the usual oath was administered to me in relation to his residence here, how long had I known him.

Q. You were sworn, you remember that? A. Yes sir.

Q. Who asked you the questions, if anybody? A. I could not positively say whether it was the Judge or the Clerk. I think it was the Clerk asked the questions.

Q. Do you remember whether you stated your acquaintance with Cannon and what you knew about his living in this country? A. I told my acquaintance just exactly as it occurred.

Q. Was any other witness there besides you? A. There was.

Q. Who was it? A. One Joseph Cain.

Q. How long had you known him? A. About the same time I had Mr. Cannon. I don't know which of them I made the acquaintance of first.

Q. Do you know whether he was, or whether he stated at that time that he was a citizen of the United States? A. Mr. Cain?

Q. Yes. A. He so stated.

Q. Do you know whether he was sworn or not? A. He was.

Q. Was he enquired of?

All this part of the testimony is taken under the objection of counsel for Mr. Campbell.

Q. Was he enquired of after being sworn? A. He was.

Q. Was Mr. Cannon enquired of? A. He was.

Q. After you had both been enquired of, did the Court say or do any thing—the Judge of the Court, I mean, by the Court?

Objected to on the same ground?

A. Yes sir.

Q. What did he say or do—what action did he announce? A. He directed the Clerk to administer the oath to Mr. Cannon.

Q. Did he say anything as to what oath it was? Or what order was made in the premises? A. Now I could not positively state the exact words.

Q. Did he in substance say whether he declared him a citizen of the United States? A. I so understood him.

Q. Do you know whether Mr. Cannon thereupon did take the oath? A. He did take the usual oath of allegiance, renouncing all allegiance to any foreign Prince, Potentate, State or Sovereignty, especially Victoria, Queen of Great Britain.

Q. Do you know whether this Joseph Cain, who was a witness, with you, is living or not? A. He is not.

Q. How do you know otherwise? A. I helped inter his body in the ground.

Q. Do you know whether this Leonidas Shaver, who was at one time judge of this court, is living or not? A. He is not.

Q. How do you know otherwise? A. I helped deposit his remains in the ground.

Q. Do you remember who was the Clerk of the Court that day? A. Very distinctly.

Q. Who was it? A. One William I. Appleby.

Q. How long had you known him? A. From my arrival in this country, or a few days afterwards.

Q. Knew him well? A. Knew him well—intimately. Knew him by reputation before I saw him.

Q. Did you have business with h'm after you came? A. Many a time.

Q. Is he living or dead? A. He is dead.

Q. Did you attend his funeral also? A. I believe I attended his funeral. I know he is dead.

Judge McBride—We admit he is dead.

Q. What position did you hold at that time? A. I held the office of Probate Judge of Salt Lake County.

Q. How was that situated, as to the place where the Court was then held locally? A. My office was in the same building with his.

Q. State whether it had been a common thing for you to attend for people you were acquainted with and act as witness to their naturalization? A. I have in several instances, and as it was next door to mine I was frequently in there.

Q. Had you frequently seen the process of naturalization? A. Time and time again.

Q. State whether the formula that was gone through with you and the other witness and Mr. Cannon on that day was as you had usually observed it? A. Precisely the same. I was very familiar with the formula, had been present many a time, and to the best of my knowledge everything was done precisely according to the form.

Q. What was the name of the Court then presiding over Salt Lake County? A. I could not tell whether it was the First, Second or Third District Court.

Q. Do you know whether or not it was at one time called the First District Court? A. It was at one time called the First District Court. I cannot tell what year it was, it was re-districted. It was re-districted several times, and finally became the Third District.

Q. You have seen this man Appleby write, have you? A. Often.

Q. I would like you to look at a paper marked by the Notary for identification, Exhibit "Z," and tell me if that signature, the words "W. I. Appleby," is in your judgment the genuine hand-writing of the gentleman you name as Clerk? A. It is the signature of W. I. Appleby.

Q. That is his genuine hand-writing? A. Yes, that is his genuine hand-writing.

Q. You look at the seal. Do you know whether that was the seal he commonly used at that time? A. I could not say. I presume I have seen Mr. Appleby's signature to a hundred documents.

Q. Was he Clerk of any other Court at that time? A. I think he was Clerk of the Supreme Court.

Q. Did you wait to see whether Cannon received any certificate that day or not? A. I don't think I did, for I was in a hurry, and I paid no attention to the arrangements between him and the Clerk.

CROSS-EXAMINED BY JUDGE MC BRIDE.

Q. How long had Mr. Cannon been in the Territory, to your knowledge, before the day this naturalization took place? A. At that particular time he had not been here many days.

Q. About how long? A. Well, I should think less than ten days.

Q. Do you know of any reason for those proceedings at that time—any special reason? A. I don't know that I do know any special reason for it.

Q. What age was Mr. Cannon when you first knew him? A. Some twelve or fourteen years.

Q. Living with his parents at that time? A. Yes, sir; his father was living, his mother, I learned from him and family, was dead, on her passage to this country.

Q. How long since you had known him personally in the United States prior to the time that he returned in 1854? What was the interval between your personal acquaintance with him and that time? A. Mr. Cannon was an apprentice employed in the printing office at Nauvoo that I had charge of.

Q. What year was that? A. The year 1843—it would be about the beginning of the year 1846.

Q. Now, when did you part after that? A. Well, in the break-up there at Nauvoo, when our people left there for the West. I left the office there something about the last of the year 1845. I remained there until May 10th, or 11th, 1846, when I left. I think Mr. Cannon left there before I did. I cannot tell the date when he left.

Q. When did you see him next? A. I saw him here in this valley next time I saw him.

Q. At what time? A. In the year 1854.

Q. Then from the time you parted with him in Illinois in 1845 or 1846, until you saw him here in 1854, you did not meet? A. Not personally.

Q. During that time do you know whether he was living in the United States? A. I had every reason to believe he was living in the United States.

Q. Were you aware of the fact that he had been absent in the Sandwich Islands for some three or four years of that time? A. I can tell you my source of knowledge.

Q. I say, had you any information on that subject? A. I had.

Q. From that information, was it true he had been residing in the Sandwich Islands? A. He had been temporarily residing in the Sandwich Islands. When I came here he was one of the first men I inquired about.

Q. Do you know what time he resided there from any declaration of his own? A. I don't know that I could tell.

Q. About what time? A. I think in 1850—that is my opinion—or 1851 he left.

Q. Were you aware of that fact at the time you were one of the witnesses? A. I was aware of the facts in relation to it and the circumstances.

Q. What position did you occupy at that time? A. Probate Judge.

Q. And have been from that time to this? A. Yes sir; and was also postmaster in Salt Lake City.

Q. At the time that this naturalization took place, as stated by you, state whether or not that Court was naturalizing citizens also? A. It was not.

Q. When did it begin naturalizing citizens—in the Probate Court? A. Sometime after that.

Q. Do you know whether Mr. Cannon was a married man at that time, having a family? A. I have reason to believe he was not a married man. I think he became a married man soon after. I could not tell what date.

Q. Do you know whether he was a man of family before he went to the Sandwich Islands or not? A. He never was married to my knowledge until after that time.

Q. Do you know from any declaration of his own what business he was engaged in in the Sandwich Islands? A. I knew very well.

Q. I will ask you to state his own declarations as to what business he was engaged in in the Sandwich Islands? A. I have every reason to believe from his letters—communications from him—he was there as a missionary with others.

Q. Do you know whether or not he was under any order or direction from any central authority here? A. I don't know that he was there under any particular order. I had understood before I got here that he had been designated as a missionary to the Sandwich Islands, having been in California at the time.

Q. You understood him to have been sent there as a missionary in the way in which missionaries were sent from here at that time? A. Yes, sir; if there is any coercion it is designated in that.

Q. That is not what I asked. A. I understood that he went there by request.

Q. Judge, have you any distinct recollection of this proceeding before the District Court—I mean now independent of anything else except your recollection? A. Nothing only my recollection.

Q. Have you any distinct recollection about it? A. I remember going there and I remember his speaking to me about it.

Q. Could you tell anything about what the oath was that was administered if you had not seen any of the papers? A. From my acquaintance with the laws of the United States, and the proceedings that were had in admitting citizens of the United States, I understood and know that all the proceedings there were strictly in accordance with the laws of the United States. I remember being there at those proceedings.

Q. Is it not about this, that you recollect being there and being a witness on the application for naturalization. Have you any distinct recollection as to what took place other than that fact? A. I have stated and will state the facts again. Mr. Cannon, after his arrival here from California, told me, as I had often heard him speak before about his being a citizen of the United States, that he was now here and wanted to become a citizen, and as I had been acquainted with him he asked me if I would be a witness for him. I said yes. He called on me. The District Court was held there, and the postoffice, and my office in the building. I was the manager of the Deseret News office, which was on the opposite corner, and was backwards and forwards to those offices many times a day, and my impression is that I was passing between those offices, on the way to the Deseret News office, when he called me. I was not there but a few minutes.

Q. Do you remember any of the questions that were asked on that occasion? A. I know that the usual questions were asked me.

Q. What do you mean by the usual questions? A. The questions that are usually asked of applicants and witnesses when a person makes application to become a citizen of the United States.

Q. Were you asked the question whether Mr. Cannon had resided in the United States for five years next preceding his application? A. I told the circumstances just as they were. I was asked how long I had been acquainted with him.

Q. Were you asked as to whether Mr. Cannon had resided for the five years preceding in the United States? A. I wish to tell the circumstances how I knew it.

Q. You said you had known him for a number of years? A. Yes, sir.

Q. Were you asked whether he had resided in the limits of the United States at that time for five years next preceding? A. I wish to tell the circumstances just exactly as they were.

Q. Did you state that he had been abroad for four years' preceding? A. I told him he had been abroad for four years in the Sandwich Islands as a missionary. I knew from having received communications from him time and time again.

Q. You did not know personally—you had not been in this interval at the Sandwich Islands? A. I will say that I received letters from him—

Q. That satisfied you? A. Yes, sir; I knew they were letters that were mailed to me from him.

Q. Were you in the Sandwich Islands during this interval? A. I was not, of course. I had a brother there and a cousin there. I was in communication with them as well as I was with him.

Q. You say you stated these facts? A. I stated the facts—that is my knowledge, and being acquainted with him, and when I had been acquainted with him.

Q. Did you state he was abroad in the Sandwich Islands? A. I think I was asked if I knew he had been there. I think I said, to the best of my knowledge, he had been temporarily absent on a mission.

Q. You were aware that at the time of this application for naturalization he had not lived in this country even for the year next preceding? A. I knew the circumstances just as I have stated, that he had been there. I had not seen him here. I had understood from communications from him and his friends that he came here, went from here to California, and from there he had been requested to go to the Sandwich Islands on a mission.

Q. How long had you known Mr. Cain? A. I knew Mr. Cain—upon reflection I think I got acquainted with Mr. Cannon a little before I got acquainted with Mr. Cain. I don't know and can't state positively whether it was 1843 or 1844 that I first got acquainted with Mr. Cain, but I think in 1843, both the same year.

Q. Do you remember any questions being asked Mr. Cain about his acquaintance with Mr. Cannon? A. I can, possibly. I don't know whether he was questioned as to the year.

Q. You remember that he was a witness? A. He was there—went with me.

Q. Do you know whether he was a native or naturalized citizen? A. I understood him to be a naturalized citizen. I understood he was a native of the Isle of Man. He had been in this Territory most of the time for five years. When we broke up in Nauvoo my recollection is that Mr. Cain

went to England before I left the Mississippi river—before I left Nauvoo. I did not know much about him then, as I came to this western country. Communications between here and the States were not very frequent. On my way across the plains I think I had learned that Mr. Cain had been in California, and when I came here he was one of the first men I met. He had returned.

Q. Now, was that the first you saw him? A. On the 28th of September, 1851. I saw him.

Q. From that time up to these proceedings in the Court, when he was a witness for Mr. Cannon, do you know where Mr. Cain resided? A. I had every reason to believe he resided here.

Q. Did you see him at intervals during that time? A. After I got here we met every day.

Q. About what aged man was he? A. Well, at the time I arrived in this country I think he was about thirty.

Q. How long has he been dead? A. He died, I think, in the year 1855.

Q. You think on a former occasion you did testify that Judge Styles was presiding? A. I think I was asked the question. I commenced reflecting about the matter. I knew that Judge Styles succeeded Judge Snow here, and Judge Snow being younger, like myself, than he is now, we used to occasionally joke him about his being turned out of office. I thought Styles succeeded him on the bench here, but that is a thing I could not positively state.

Q. You have undertaken to refresh your memory by reference to records? A. Yes.

Q. What records? A. Little diary I kept.

Q. Did you in this little diary make any entry of this naturalization proceeding? A. No, sir; I think not. My diary was kept more with reference to my own affairs—with reference to where I was and what I was doing, etc. It was very brief.

Q. Have you seen or examined any records, or what purport to be records, of this proceeding? A. I have not.

Q. Have you seen this certificate before that was presented, signed by Mr. Appleby? A. If I have, I don't remember when I may have seen it.

Q. By saying you referred to records, you meant a record of your own? A. Yes, sir; the circumstances and events that transpired; the arrival and departure of the mail was one of those things. When my attention was first called to this matter, I was of the opinion that Mr. Cannon came after the mail—

Q. What is your recollection of the time he arrived here? A. It was after the arrival of the mail some days.

Q. I am speaking now with reference to the date? A. My opinion is somewhere about the fifth, sixth, seventh, eighth or ninth of November. I made a note of the arrival of the mail and the persons with it. The arrival of the mail in those days was a very important time in this country, when we had a mail once a month East and West. When the mail arrived, generally everybody quit business and went to see what was going on outside. I was postmaster here and made a note of the persons that came as passengers.

RE-DIRECT.

Q. When you say missionary, you mean missionary of the Mormon Church, I suppose? A. Yes, sir; I do.

Q. State whether the Mormon Church then had its headquarters at Salt Lake City? A. Yes, sir.

Q. I mean by then from 1849 to 1854? A. Yes, sir.

Q. When missionaries were sent out then from the Mormon Church, was it expected they would return here to Salt Lake City as the head centre? A. Always.

Q. State whether those missionaries generally treated and considered this place as their home—this country as their home? A. Always.

Q. Or this Territory? A. Always.

Q. Counsel asked as to declarations of Mr. Cannon as to where he had been when he asked you to be a witness for him—did he make any declarations to you as to whether he had always considered this place as his home or not?

Objected to as incompetent.

A. I don't know whether he said anything about it or not. I knew from his communications to me that that was his intention. I don't know anything any otherwise.

Q. Do you know whether Mr. Cannon's family, friends and kindred, and if so, what kindred and what relatives were here? A. His brothers and sisters were here.

Q. Younger sisters and brothers, or older? A. All younger than he.

Q. How many of them? A. His oldest sister is the wife of Mr. Lambert. I was well acquainted with her.

Q. How many of them were there? A. Five, or six, or seven—somewhere along there. I could think them all up, for I have seen them all since I have been in this country.

James W. Cummings, sworn for George Q. Cannon.

EXAMINED BY ARTHUR BROWN, ESQ.

Q. You live in Utah? A. I live in Utah.

Q. Have you ever held the position of clerk of any of its Courts? A. I have held the position of Clerk of the Probate and County Court of Salt Lake County, and also of the District Court of this district.

Q. When was you Clerk of this district? A. I succeeded William I. Appleby. I cannot tell the exact date. The records will show.

Q. What name was the district in number? A. It was, if I recollect right, the Third District Court, but I would not swear positively to it, because it has been changed.

Q. Do you know whether it had ever been called the First District Court? A. Yes, sir; it had.

Q. Did you receive some of the records from Mr. Appleby? A. I received Mr. Appleby's records at the time.

Q. Was he living when he turned them over to you? A. Yes, sir.

Q. You know of his death? A. Yes, sir; I was at his funeral.

Q. Do you know his hand-writing? A. Yes, sir; we had our office in the same room for sometime and I frequently saw him write and frequently saw it in comparing documents.

Q. Look at Exhibit "Z"—what do you say to the words at the bottom, W. I. Appleby, being his hand-writing? A. That is his signature. I could swear to it anywhere.

Q. How about the body of that certificate? A. Well, sir; it is his writing.

Q. Were you familiar with the seal of the Court? A. I was, sir.

Q. What would you say about that being one of the former seals of the Court? A. That is one of the former seals of the Court. I had that in my possession.

Q. That same seal? A. Yes, sir; it was the first seal that was made. It was made here.

Q. On the back of Exhibit "Z" won't you read to Mr. Patterson the endorsement and tell me whose hand-writing that endorsement is in, on the back of Exhibit "Z?" A. "George Q. Cannon's certificate of citizenship, December 7th, 1854." That is the writing of W. I. Appleby.

Q. Read the further endorsement at the middle, if you can? A. "Recorded in Record 'A' of Naturalizations, Folio 585, W. I. Appleby, Clerk."

Q. Whose handwriting is all that endorsement in? A. It is in W. I. Appleby's; the man that wrote the body of it and the man that was Clerk of the Court at the time. I know, because I was associated with him so closely, being both in the same office part of the time.

CROSS-EXAMINED BY JUDGE MCBRIDE.

Q. Was there any other seal of the District Court except the one on that document? A. I think not; at least that was the first. What there was afterwards I cannot say.

Q. When you were Clerk was that the seal that was used? A. Yes, sir.

Q. Who was the Judge under whom you served as Clerk? A. At what time?

Q. At any time? A. Judge Shaver was Judge, if my memory serves me correctly, when the paper was made out, and if I recollect correctly Judge Snow succeeded him here in this district, but I am not positive about it.

Q. Who was Judge at the time you were Clerk? A. Judge Snow.

Q. Was not that prior to Judge Shaver? A. I don't know but what he was prior to him, and afterwards too; I cannot say.

Q. Was not you the Clerk while Judge Sinclair was upon the bench? A. I think I was a portion of the time. I was not Clerk but a short time after he came.

Q. Do you remember what year you were Clerk? A. I could not say now. It was 1855 I think—1855 and part of 1856.

Q. Was Appleby ever Clerk after you, do you know? A. I think not, but I would not say that positively. There was considerable changing about. The Courts had but little to do except naturalization, or something like that. At that time the law gave the Probate Court jurisdiction of naturalization equally with the District Court. When I was first appointed Clerk of the Probate Court I had records and issued certificates of naturalization, until it was held that the law was not valid. I issued quite a number of certificates as Clerk of the Probate Court, before the law was rejected by Congress.

Q. That was during the time when the Probate Courts held that they had jurisdiction? A. Yes, sir.

Q. Were you ever Clerk of the Supreme Court? A. No, sir.

Zerubbabel Snow, sworn for George Q. Cannon.

EXAMINED BY ARTHUR BROWN, ESQ.

Q. You reside in Utah, do you? A. Yes, sir.

Q. How many years have you lived here? A. Since July, 1851.

Q. What is your business? A. The profession of the law.

Q. Have you been a Judge on the bench a part of the time since you have been here? A. Yes, sir.

Q. Judge of what Court? A. I was appointed Associate Justice of the Supreme Court of the Territory by President Fillmore. Arrived here in July, 1851. A proclamation was made by the Governor assigning the districts, and I was first assigned to one that was north of here. Subsequently, in October of that year, I came to this city and sat in this district.

Q. In 1854, who was Clerk of the Supreme Court of this Territory? A. William I. Appleby.

Q. Who was Clerk of the District embracing Salt Lake County? A. William I. Appleby.

Q. What was the name of that district as it then stood, in 1854? A. I will have to refer to the statute.

Q. Ask you to state if you know when the First District was formed, and where the statute is to be found creating it, and if you have it you may state when it was changed, and where that statute changing it is to be found? A. It is my recollection that the Governor formed the First District by a proclamation under the Organic law, and this was the first according to my recollection, according to the statute. I have the statute of the first session of the Legislative Assembly of this Territory; the first act passed is found on page 37 of the laws of that session; it was approved October 4th, 1851. Salt Lake County at that time was embraced in that district. It would be more difficult for me to find when the change was made.

Q. What is your recollection of when the change was made? A. It is my recollection that the change was not made until some years after.

Q. 1857 or 1858, somewhere along there, would you say? A. Yes, I should think it was as late as that.

Q. What would be your recollection of the time? A. I continued Judge in that district until September, 1854, and the Legislature did not certainly meet until after that. It was the First District in 1854.

Q. Do you know whether, when you was Judge of the District Court in Salt Lake County, it had been the practice to keep naturalizations in a book separate from the general journals of the Court?

Objected to as incompetent and improper.

Q. It is my recollection that Judge Brandenberry appointed Mr. Appleby Clerk of the Court. In October, 1854, Mr. Appleby came to me and spoke to me about getting a printed record for naturalizations; told me it was the practice in New Jersey where he had come from, and showed me a copy of what he wanted to have printed. I examined that copy and did not perceive any reason why it was not correct. I told him he might get some of them printed. I don't think there was ever any journal entry made by me as Judge to that effect. If there was I don't recollect it.

Q. It was a private talk between you and your Clerk? A. Yes, sir; it was a private talk, and he afterwards showed me the book he had got.

Q. I show you Exhibit "Z"—whose hand-writing is the written part of that in? A. Mr. William I. Appleby's.

Q. Are you familiar with his hand-writing? A. Yes, sir; I was familiar with it from the fall of 1851 to the fall of 1854.

Q. How about the signature? A. I have no doubt that is his signature. I have no doubt the whole of the written part is in his hand-writing.

Q. His genuine hand-writing? A. I have no doubt it is all in his hand-writing, so far as the writing is concerned; the printed matter is another thing.

Q. Look at that seal, and state whether you recognize that as being the seal of the old District Court which comprised Salt Lake County. A. Well, that is my recollection of the seal; yes, there is the eagle, there is the bee hive, and there are the arrows. What I should call the left eagle wing is plainer than the other. The right eagle wing is not so plain.

Q. You call that the seal? A. I have no doubt of it myself. I would state that Mr. Shaver would succeed me instead of Mr. Styles. Mr. Shaver would succeed me, coming after September, and until the next Legislative Assembly would meet, which would be the time of the date of this certificate, Exhibit "Z." On the 7th of December Leonidas Shaver would be on the bench.

CROSS-EXAMINED BY JUDGE MCBRIDE.

Q. At what time did you go off the bench? A. My term expired September 30th, 1854. That is my recollection of the date of its expiration.

Q. You were not then Judge at the time this certificate purports to have been issued? A. No, sir; I was not.

Q. Who did you say succeeded you? A. Leonidas Shaver would be the one.

Q. Do you know whether he is living or not? A. He is not living.

Q. Do you know when Appleby ceased to be Clerk? A. No, sir; he was Clerk when I went off the bench, and he continued to be Clerk for a considerable length of time after, but I am not able to state the precise time. If I should be able to tell, it would be from some records.

Q. Were you acquainted with Mr. Cannon in 1854? A. I became acquainted with Mr. Cannon about that time, but I am not able to give the precise date.

Q. Do you know whether he had been living in Salt Lake or in this Territory prior to 1854? A. No; all I should have any distinct recollection about would be what general report would say.

Q. Well, did you know him in this Territory before 1854? A. No, sir; I have no precise recollection of knowing him before that time.

Q. Did you ever know him prior to that time? A. No, I don't know that I did.

Q. You had been in the Territory some three years? A. I came in 1851, and I had remained here up to that time—had resided in this city.

Q. Do you know about the time he came to this city to reside, of your own knowledge? A. No; I say I have no recollection of the precise time that he came here, or the precise time I became acquainted with him, but it was quite a little period after I came.

Q. Was it earlier than the year 1854? A. I should not be willing to say it was. I should not from my recollection be able to fix any date.

Q. Was he a man of family when you first knew him, do you recollect about that—whether he was a married man or not, and had a home or family? A. No, I could not say as to that, but I have a recollection of learning quite early concerning his marriage to a Miss Hoagland. That is my recollection.

E. T. Sprague recalled.

EXAMINED BY ARTHUR BROWN, ESQ.

Q. In the testimony you gave the other day you fully described a book containing George Q. Cannon's naturalization. I ask you further, by way of description, if the letter "A" in very large letters is marked on the back of that book in ink? A. Yes, it is.

Q. On the back does it also appear in printed letters "Record of Naturalization?" A. Yes, somewhat indistinct.

Q. On what page of that book, Record of Naturalization "A," does the naturalization of George Q. Cannon appear? A. 585.

Q. Have you compared that with the paper shown you, Exhibit "Z"? A. I have.

Q. How does Exhibit "Z" differ from the record at page 585 of which you have attached a copy to your testimony? A. In the second line the second blank, which in the book is filled with the words "Queen Victoria," in the certificate shown me is filled with the words "Victoria, Queen of Great Britain and Ireland." In the book, in place of the seal, are the letters L. S. enclosed in brackets, and on the certificate is what purports to be the seal of the First District Court of Utah. Those are the only differences I find.

Cross-examination waived.

June 1st, 1881.

Benjamin F. Johnson, sworn for Geo. Q. Cannon.

EXAMINED BY ARTHUR BROWN, ESQ.

Q. Where do you reside? A. I reside in Utah.

Q. On a farm? A. Yes.

Q. Seventy miles away from here? A. Seventy-two and a half.

Q. In Utah County? A. Yes, sir.

Q. How long have you been a resident of Utah County? A. Since October, 1848.

Q. Do you know George Q. Cannon? A. I knew him in 1849.

Q. Where? A. Here in Utah. I knew him also in Nauvoo—that is, saw him many times there as a boy.

Q. After that, did you see him at one time in the Sandwich Islands? A. Yes.

Q. What was your errand there? A. I went as a missionary.

Q. For the Mormon Church? A. For the Church of Latter-day Saints.

Q. What was his business there? A. He was a missionary.

Q. For what? A. For the same Church.

Q. How near to him did you stop while you were there and while he was there? A. The first few weeks we were on different Islands. After my residence there a short time he came to Honolulu. Our room was together, and our bed commonly together, and we were immediately associated for many months.

Q. When was it you first saw him in the Sandwich Islands? A. The fore part of January, 1853.

Q. How long did you room with him? A. I would have to consult my journal for that.

Q. Well, about how long? A. A number of months; I think about a year—in the neighborhood of a year and probably more than that.

Q. Did you talk with him every day? A. Every day, unless we were divided for a short period on business pertaining to our mission.

Q. Did you ever hear him use any expression as to what place he regarded as his home? A. Yes, all the time, I might say. It was the leading feeling between us.

Q. What were the expressions you heard him make use of?

Objected to as incompetent.

A. When I first met George Q. Cannon it was in our first Conference meeting. There was nine of us that went together, and there was a number, about five, that were already there previous to our going. We got, in a few days after our arrival, into what we called a mission Conference of all the Elders from Utah.

Q. Nine of you? A. All that were on the Islands. There was nine of us went together and there was some there before. Brother Cannon said he felt as if he had been there a good long while—a number of years, had acquired the language and translated the Book of Mormon, and he felt as though he ought to go home. But we were young, green, unacquainted with the language and the people, and he was the leading spirit that was there. We said, "Brother Cannon, we cannot let you go, we must have you here with us," and it was the feeling of the Conference that he should stay, and he consented to stay. The vote of the Conference, what we would call the authority of the Conference, voted for him to stay.

Q. Did he use the expression, "going home?" A. Going home was always the expression with us all.

Q. Did he use it? A. He used it, he always used it.

Q. Did he indicate in any manner what locality he meant by home? A. Certainly, Utah—Salt Lake City was his home.

Q. After that, when you roomed with him, did he allude to any place as his home? A. It was our general subject. It was with me.

Q. You are not on trial, he is. A. This was his common conversation—home in Salt Lake, wanting to go home as soon as the duties of his mission permitted him to go.

Q. How frequently did he speak to you, while you roomed with him, of Utah, Salt Lake City, as his home? A. If I should guess—

Q. What is your best recollection? A. According to my best recollection, there was more days that he spoke of it more than once where there was never a day that he missed saying something in regard to coming home.

Q. You would say, then, he spoke of it as often as once a day? A. I know I did, and we were very much alike.

Q. How about him? A. I think he spoke of it every day while we were together for months.

Q. Do you know what kept him there after you arrived? A. I know that the duties he felt that he owed to his mission kept him there. That was his expression.

Q. Do you know whether he desired on any other occasion than this you have narrated, of those engaged with him in the labor to return to Utah? A. I never heard him express a desire that I can call to mind for anything in relation to returning, but to go home and live with his friends and marry the wife of his youth, and be at home in Salt Lake City, or in Utah. I know he showed me letters that he was writing to his friends and to a young lady that he was courting, promising to return home just as soon as he was exonerated from the duties of his mission.

Q. Was he kept there by anything that was said by the other members

of the Church there? A. Well, left to himself he would, I have no doubt, have returned home, but the presidency of the mission required him to stay there, or otherwise by the vote of the Conference which required him, asked him, and urged him to stay.

Q. Was there a local President of that mission? A. There was.

Q. Who was it? A. Philip D. Lewis.

Q. Is he living or dead? A. He is dead.

Q. Did he say anything about his staying? A. Yes, sir.

Q. What was the nature of it—requiring him to stay? A. Requiring him to stay.

All this testimony is subject to objection as hearsay and incompetent.

Witness—I might just say, if you get my idea clearly, it is expected of us to go on missions as Latter-day Saints, that we be controlled by the Conference under the presidency of that mission to which you go.

Q. That branch of the business? A. We call them Conferences, and every mission is a Conference.

Q. And that branch of the business, that presidency or Conference voted for him to stay there? A. Yes, sir; he would have done something that was not expected if he had gone home. It was not expected he would go without being released. I know he did not voluntarily stay.

Q. At what season did he start to return? A. I would have to consult my journal for that, but I think it was in July.

Q. Can you tell the season of the year? A. I think in the summer season.

Q. What season? A. 1854.

CROSS-EXAMINED BY JUDGE MCBRIDE.

Q. Where did you first know Mr. Cannon? A. As a boy I knew him in Nauvoo.

Q. About what time was that? A. That was in 1846—1845 and 1846.

Q. Did you afterwards know him in Utah? A. I knew him here in Utah.

Q. At what time was he here? A. In the fall of '49 I think. I don't know that I would say positively. I know that he came to me to get outfits, or something pertaining to his going West, when he started to California. But I had not seen him many times—was not intimately acquainted with him, or associated or connected with him in any way, only I had seen him. He was ten years younger than me. He was rather boyish. He was not an associate of mine then.

Q. Do you know when he left here to go West? A. Yes, sir.

Q. Do you recollect about what time that was? A. I think it was in the fall of 1849.

Q. When you met him again it was in the Sandwich Islands? A. Yes.

Q. That you say was in 1853? A. Yes.

Q. Between those dates you had not seen him? A. No, sir.

Q. Did you know by anything he said when you met him where he had been? A. Yes.

Q. You may state if you know by any expression that he made? A. He used to tell me, that he, with others of his associates, went into the mines and mined it a while to get means to go, and I often saw things—for instance, he bought him a very fine lever watch that he procured with means he had got from the mines, and his outfit and passage money. I have heard him allude to it in that way.

Q. Where had he been after he procured his outfit—where did he go? A. He went to the Sandwich Islands.

Q. Did you understand from him, when you met him there, how long he had been in the Islands? A. Well, now; I understood that he had come direct from San Francisco after leaving the mining camps, that he came directly there on a mission that was appointed to him to go—obtained his outfit, etc., and came directly over on a mission, and I have often heard him tell in relation to the progress of the mission, how soon he learned the language, how soon he commenced his translations, etc.

Q. How long would that have been that he was in the Islands about? A. I think he went from here in the fall, and I think the next fall he went over.

Q. That would be the fall of 1850 then? A. Yes; I think he had been there from 1850, some two years or more, when I got there.

Q. You say he was engaged as a missionary—from any declarations that he made during the time he was there, did he go there as a missionary sent for that purpose by the authorities here or anywhere else? A. I always heard him represent that he did, and I know that the authorities of our Church considered it so, because I know they talked of it and wrote to us and instructed our company before we went in that manner.

Q. I am speaking now of him—do you know from any declarations he made? A. Yes, I know he did make that declaration that he was sent there.

Q. Is it not the habit of the Latter-day Saints to speak of Utah as their home everywhere abroad? A. I guess it is.

Q. Is it not taught, that where they can, with any convenience, it is their duty to gather with the balance of the brethren here in Utah? A. That is one feature of our peculiarities in our gathering together.

Q. And this has been considered from 1850 as the point at which they are expected to gather, those who can? A. It has always been to me, and all that seemed to feel as I did, Utah was home.

Q. What age was Mr. Cannon at that time, about? A. I think he was 26 or 27.

Q. Was he a married man at that time? A. Oh, no, I think we compared ages and I think I was about ten years older than he was, and I think I was about 37. He was 26 or 27.

Q. Did I understand you he translated the Book of Mormon into the Hawaiian language? A. Yes, sir.

TERRITORY OF UTAH,
COUNTY OF SALT LAKE. } ss.

I, Adam S. Patterson, a Notary Public in and for said Salt Lake County, do hereby certify that the witnesses in the foregoing deposition named were by me duly sworn to testify the truth, the whole truth and nothing but the truth, in the said cause; that said depositions were taken at the time mentioned therein at my office in Salt Lake City and County; that pursuant to the annexed stipulation the said depositions were taken phonographically by me and afterwards written out.

In witness whereof, I have hereunto subscribed my name
and affixed my seal of office this 30th day of June, 1881.

A. S. PATTERSON,

[SEAL.] Notary Public in and for Salt Lake County, Utah.

EXHIBIT "A."—JOURNAL ENTRY.

Fourth day—December 7th.

Court met pursuant to adjournment, officers all present. Journal read.

R. T. Burton, Deputy Marshal, made return of the summons issued in the case of C. Vorhis & Co. vs. Robert Caldwell, and W. P. Reynolds vs. Alfred B. Lambson, and the subpoenas issued in the case of the People vs. William Sullivan, all endorsed duly served. Clerk issued five subpoenas for witnesses before United States Grand Jury, returnable forthwith.

Dimmick B. Huntington was appointed by M. Holman, United States District Attorney, Assistant Interpreter for the Indians, to interpret both before the United States Grand Jury and Court, and he appeared before the Clerk and was duly sworn as such Interpreter.

The United States Grand Jury not being ready to make any presentments, the Court adjourned until the following morning at eleven o'clock.

LEO. SHAVER, *Judge*.

TERRITORY OF UTAH, }
COUNTY OF SALT LAKE. } ss.

I, H. G. McMillan, Deputy Clerk of the Third Judicial District Court of Utah Territory, do hereby certify that the foregoing is a full, true and correct copy of the original Journal of Minute Book entries of the First Judicial District Court of Utah Territory, of the proceedings of said Court, had and entered on the 7th day of December, 1854, as the same appears on page 216 of the Journal of said Court now in my possession.

Witness my hand and the seal of said court at Salt Lake City
this 18th day of May, A. D. 1881.

[SEAL.]

H. G. McMILLAN, *Deputy Clerk*.

EXHIBIT "B."—RULE OF COURT.

In regard to foreigners that wished to be naturalized and become citizens of the United States or declare their intention the Court ordered that the following rule be entered, viz:

That all persons declaring their intention to become citizens of the United States of America shall, at the time of making the declaration, pay the sum of one dollar for the oath of declaration and record entry of the same, and two dollars for the certificate and seal of such declaration, with naturalization and recording the same, and that the United States Marshal for this Territory procure at the expense of the Government of the United States a suitable book with blanks printed therein, for recording said declarations and naturalizations for the use of this Court.

LEO. SHAVER.

TERRITORY OF UTAH, }
COUNTY OF SALT LAKE. } ss.

I, H. G. McMillan, Deputy Clerk of the Third Judicial District Court of Utah Territory, do hereby certify that the foregoing is a full, true and correct copy of the original order made and entered on page 177 of the Journal of the First Judicial District Court of Utah Territory, on the 18th day of January, 1854, of record in my office and in my custody.

Witness my hand and the seal of said Court, at Salt Lake City, this 18th day of May, A. D. 1881.

[SEAL.]

H. G. McMILLAN, *Deputy Clerk*.

XLIX

EXHIBIT "C."

CERTIFICATE OF CITIZENSHIP OF ONE WHO ARRIVED IN THE UNITED STATES BEFORE HE WAS EIGHTEEN.

UNITED STATES OF AMERICA, TERRITORY OF UTAH, GREAT SALT LAKE COUNTY.	} ss.	United States First District Court for the Territory of Utah.
--	-------	--

Be it remembered, that on the seventh day of December, A. D. 1854, George Q. Cannon, a subject of Queen Victoria, made application and satisfied the court that he came to reside in the United States before he was eighteen years of age; And thereupon, the said George Q. Cannon appeared in open court, and was sworn in due form of law, and on his oath did say, that for three years last past, it has been his *bona fide* intention to become a citizen of the United States, and to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever; and thereupon, the court being satisfied by the oaths of Joseph Cain and Elias Smith, two citizens of the United States, that the said George Q. Cannon, for one year last past, has resided in this Territory, and for four years previous thereto he resided in the United States—that during that time he has behaved as a man of good moral character—that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, admitted him to be a citizen of the same. And thereupon, the said George Q. Cannon was in due form of law sworn to support the Constitution of the United States, and absolutely and entirely to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he heretofore has been.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this seventh day of December, one thousand eight hundred and fifty-four and of the Independence of the United States the seventy-ninth.

[SEAL.]

W. I. APPLEBY, Clerk.

EXHIBIT "D."

DECLARATION OF INTENTION TO BECOME A CITIZEN OF THE UNITED STATES.

I, William C. Staines, do declare on oath that it is *bona fide* my intention to become a citizen of the United States, and to renounce and abjure forever all allegiance and fidelity to all and any foreign Prince, Potentate, State and Sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, of whom I was a subject.

Sworn before me, at my office in G. S. L. City, this 5th day of January, A. D. 1853.

[SEAL.]

W. I. APPLEBY,
Clerk of the United States First District Court in and for the Territory of Utah.

CERTIFICATE OF CITIZENSHIP.

UNITED STATES OF AMERICA,
TERRITORY OF UTAH,
GREAT SALT LAKE COUNTY,)

ss.

United States Third District Court
for the Territory of Utah.

Be it remembered, that on the 22d day of September, A. D. 1859, John Orson Angus, a subject of Queen Victoria, made application to become a citizen of the United States, and produced to this Court satisfactory evidence that he, on the fifth day of July, A. D. 1856, in due form of law, declared his intention to become such a citizen; and, thereupon, the Court being satisfied by the oaths of Robert L. Campbell and Thomas Bullock, two citizens of the United States, that the said John O. Angus for one year last past has resided in this Territory, and for eighteen years previous thereto he has resided in the United States of America. During that time he has behaved as a man of good moral character; that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, and admitted him to be a citizen of the same. And thereupon the said John Orson Angus was sworn in due form of law to support the Constitution of the United States, and absolutely and entirely renounce, and abjure, forever, all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he heretofore has been.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court, this twenty-second day of September, one thousand eight hundred and fifty-nine, and of the independence of the United States the 84th.

[SEAL.]

CURTIS E. BOLTON, Clerk.

EXHIBIT "E."

CERTIFICATE OF CITIZENSHIP OF ONE WHO ARRIVED IN THE UNITED STATES BEFORE HE WAS EIGHTEEN.

UNITED STATES OF AMERICA,
TERRITORY OF UTAH,
GREAT SALT LAKE COUNTY.)

ss.

United States Supreme Court for the
Territory of Utah.

Be it remembered, that on the 28th day of August, A. D. 1856, Samuel Roskelley, a subject of Queen Victoria, made application and satisfied the court that he came to reside in the United States before he was eighteen years of age; and thereupon the said Samuel Roskelley appeared in open court and was sworn in due form of law, and on his oath did say, that for three years last past it has been his *bona fide* intention to become a citizen of the United States, and to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever. And thereupon the court, being satisfied by the oaths of Ezekiel Lee and Horatio K. Whitney, two citizens of the United States, that the said Samuel Roskelley, for one year last past, has resided in this Territory, and for five years previous thereto he has resided in the United States; that during that time he has behaved as a man of good moral character; that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, admitted him to be a citizen of the same. And thereupon the said Samuel Roskelley was in due form of law sworn to support the Constitution of the United States, and absolutely and entirely to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and

particularly to Victoria, Queen of Great Britain and Ireland, whose subject he has heretofore been.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this twenty-eighth day of August, one thousand eight hundred and fifty-six, and of the independence of the United States the eighty-first.

W. I. APPLEBY.

PR. CURTIS E. BOLTON, *Clerk.*

TERRITORY OF UTAH, }
SALT LAKE COUNTY. } ss.

I, Ezra T. Sprague, Clerk of the Supreme Court of said Territory of Utah, do hereby certify that the annexed and foregoing is a full, true and correct copy of three several instruments found in the book described in my testimony, of which the first is of the first class, the second of the second class, and the third of the third class mentioned by me in said testimony, which said instruments are as testified of record in my office. The testimony referred to being attached hereto.

In testimony whereof, I have hereunto set my hand and the seal of said court, this 18th day of May, A. D. 1881.

[SEAL.]

E. T. SPRAGUE, *Clerk.*

EXHIBIT "Z."

UNITED STATES OF AMERICA, }
TERRITORY OF UTAH, } ss. United States First District Court
GREAT SALT LAKE COUNTY. } for the Territory of Utah.

Be it remembered, that on the seventh day of December, A. D. 1854, George Q. Cannon, a subject of Victoria, Queen of Great Britain and Ireland, made application and satisfied the court that he came to reside in the United States before he was eighteen years of age;

And thereupon, the said George Q. Cannon appeared in open court, and was sworn in due form of law, and on his oath did say, that for three years last past, it has been his bona fide intention to become a citizen of the United States, and to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever; and thereupon, the court being satisfied by the oaths of Joseph Cain and Elias Smith, two citizens of the United States, that the said George Q. Cannon, for one year last past, has resided in this Territory, and for four years previous thereto he resided in the United States—that during that time he has behaved as a man of good moral character—that he is attached to the principles of the Constitution of the United States, and well disposed to the good order of the inhabitants thereof, admitted him to be a citizen of the same. And thereupon, the said George Q. Cannon was in due form of law sworn to support the Constitution of the United States, and absolutely and entirely to renounce and abjure forever all allegiance and fidelity to every foreign Prince, Potentate, State and Sovereignty whatever, and particularly to Victoria, Queen of Great Britain and Ireland, whose subject he heretofore has been.

[Seal of
First Dist.
Court.]

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this seventh day of December, one thousand eight hundred and fifty-four and of the Independence of the United States the seventy-ninth.

W. I. APPLEBY, *Clerk.*

The District Court of the Third Judicial District, Utah Territory.

THE UNITED STATES, *Ex. Rel.*, ALLEN G. CAMPBELL, *Plaintiff*,
vs.
 GEORGE Q. CANNON, *Defendant*.

Now comes the plaintiff by its attorneys, P. T. Van Zile, United States District Attorney for Utah Territory, and Sutherland & McBride, and for cause of action against the said defendant above named, alleges:

That on the 8th day of January, 1881, said Allen G. Campbell received from the Governor of Utah Territory, pursuant to the law in that behalf, a certificate showing that at an election held in Utah Territory, on the day of November, 1880, according to law, for Delegate to the Forty-seventh Congress of the United States of Said Territory, said Campbell was duly elected, and that said certificate was issued to him accordingly, and that by reason of the facts stated therein, the said Campbell became entitled to said office, and is the Delegate to said Congress from the Territory of Utah.

That at said election, the said George Q. Cannon was a candidate, and claimed to have been duly elected, and after the said certificate had been issued to said Campbell, the said defendant served a notice upon the said Campbell that he would contest his right to hold said office before the House of Representatives of the Congress of the United States, and an answer denying his said claim was served on defendant by the said Campbell, and the said contest is now pending, and that therefore, said Campbell has an interest in the matters hereinafter stated. And plaintiff alleges that the said George Q. Cannon is an alien, and was born of alien parentage out of the United States, and beyond its jurisdiction, and is now and has always been an alien and a subject of Great Britain within the kingdom of which he was born. That since Cannon claims and alleges that he is a citizen of the United States as plaintiff states on information and belief, and in support of such claim, asserts that he was born in the Kingdom of Great Britain about the year 1827, that he came to the United States before he was eighteen years of age, and that on the 7th day of December, 1854, after having resided for more than one year next preceding said date, in the Territory of Utah, and for more than five years prior thereto in the United States, and having established the facts heretofore set forth by the oaths of two citizens, and made the declarations and renunciations required by law in such cases, required to entitle him to be admitted as a citizen, he was on said day adjudicated by the District Court of the First Judicial District of said Territory to be, and became a citizen of the United States, and entitled to all the rights and privileges of such—among these rights and privileges he claims the right of suffrage and holding office, and the right to be chosen and hold the office of Delegate to the House of Representatives of the Congress of the United States—the office he now claims as aforesaid. That said defendant exhibits as genuine, and claims as such evidence of his said naturalization, a certificate bearing date, the 7th day of December, 1854, purporting to be a certificate of the naturalization aforesaid, signed by W. I. Appleby, as clerk thereof, and bearing the seal of said court, a copy of which is hereto annexed and made part hereof, marked Exhibit "A," and that said certificate was issued to him in pursuance of said naturalization proceedings.

And the plaintiff on information and belief, alleges that all of said assertions, pretenses and claims, except as hereinafter stated are, and each

of them is false; and that the facts in relation to the said claims of the defendant to be a citizen are as follows:

That the said defendant was born a subject and in the limits of Great Britain, that while he was a youth and under eighteen years of age, he came to the United States to join the community of people, called Mormons or Latter-day Saints, a religious sect then located at Nauvoo, State of Illinois—said arrival being about the year 1842. That in the year 1847, he emigrated with the said community from their former location, to the Valley of Great Salt Lake—being then a part of the Republic of Mexico. That in 1849, in pursuance of an order or direction from the authorities of said sect, he left the said Salt Lake Valley on a mission to make converts and proselytes to the sect of which he claimed to be a member. That in pursuance of said purpose, he went about the month of October, 1849 to California, engaged in the matters connected with and pertaining to his said mission. That about the month of July, 1850, in pursuance of said mission and purpose, he left California and went to the kingdom of Hawaaii, and there remained and resided continuously until about the month of August, 1854, when he went to the state of California; and afterwards, and on or about the 28th day of November, 1854, he arrived in Salt Lake City, Utah Territory. That prior to said date, he had at no time filed any declaration of intention to become a citizen of the United States, and for more than four years prior to his pretended naturalization on the 7th day of December, 1854, he had actually personally lived, labored and resided out of the Territory of Utah, and outside of the limits and jurisdiction of the United States; and this plaintiff further alleges that the witnesses named in the pretended certificate of naturalization, were at said date, residents of Salt Lake City, Utah Territory, and had been for more than three years prior thereto, and that each of them then knew that said George Q. Cannon had not resided within the Territory of Utah or within the jurisdiction of the United States, for the time required or the term set forth in said certificate, and said pretended testimony which, in said certificate was false to the knowledge of the defendant, if the same was given. The plaintiff alleges that the said First District Court did not on said day and year, in any way adjudge the said George Q. Cannon to be a citizen or order the certificate aforesaid to be issued, or make any order therein, and alleges the fact to be (on information and belief), that said clerk, on his own motion, and without any authority from said court or its judge, did make out and issue said certificate to said defendant, and that the same is false and fraudulent, and that any and all claims to citizenship based thereon, are a fraud upon the laws and upon the United States. That in pursuance of his said claim to be a citizen of the United States, and of his right to hold the office of Delegate to Congress aforesaid, the said Cannon well knowing that he is not a citizen, and that his pretended certificate is false and fraudulent, and was procured in the manner heretofore set forth, has caused it to be believed to be genuine, and has procured himself to be enrolled as Delegate from Utah, in the Forty-seventh Congress of the United States, and on information and belief, plaintiff states is fraudulently procuring to be paid to him as such vested delegate, the salary pertaining to said office—thus using said certificate as a means of obtaining money from the United States Treasury. Therefore, the plaintiff prays relief as follows:

1. That this court adjudge and decree that the said defendant, George Q. Cannon is not a citizen of the United States, and has not hitherto been or ever was naturalized according to law. as such.

2. That the certificate of naturalization, or pretended naturalization, now held by said Cannon, dated December 7th 1854, as set forth in the complaint, be adjudged fraudulent and void, and be annulled.

3. That the said George Q. Cannon be enjoined and commanded to desist and refrain from demanding, accepting or receiving, from the Treasury of the United States, through its disbursing officer, the Sergeant-at-arms of the House of Representatives of the Congress of the United States, or any other person, directly or otherwise, the salary and compensation pertaining to the office of Delegate to the Forty-seventh Congress for the Territory of Utah, pending this action and upon the final hearing the injunction be made perpetual.

4. For such other and further relief as the justice of the case may require, and for costs of this action.

P. T. VAN ZILE,
U. S. Dist. Atty, and
SUTHERLAND & MCBRIDE,
Plaintiff's Attorneys.

TERRITORY OF UTAH, }
COUNTY OF SALT LAKE, } ss.

Allen G. Campbell being first duly sworn, according to law, deposes: I am the person named as the relator in the foregoing complaint, and have heard the same read and know its contents, and the same is true of my own knowledge, except such matters as are therein stated on information and belief, and those matters I believe to be true.

A. G. CAMPBELL.

Sworn and subscribed to before me, this 8th day of June, 1881.

[SEAL.]

E. G. MATTHEWS,
Notary Public.

Filed June 8th, 1881.

[EXHIBIT "A."]

(Form same as Exhibit "C;" wording same as Exhibit "Z.")

In the District Court for Third Judicial District of Utah.

UNITED STATES, <i>Ex Rel.</i> ,	}	Demurrer.
ALLEN G. CAMPBELL,		
<i>Plaintiff,</i>		
<i>vs.</i>		
GEORGE Q. CANNON,		
<i>Defendant.</i>		

The defendant demurs to the complaint, and for cause of demurrer, alleges:

1st. That the court has no jurisdiction of the subject of the action.

2d. That "The plaintiff has no legal capacity to sue the cause of action mentioned in said writ, but the action should have been brought in the name of the real party in interest;" viz: Allen G. Campbell.

3d. That there is a misjoinder of parties plaintiff in this: That the complaint attempts to unite a cause of action in which the United States, alone as a republic, in its own behalf is interested, and one in which Allen G. Campbell is alone interested.

4th. That several causes of action have been improperly joined, to wit: A cause of action for annulling a certificate of naturalization, with a cause of action for enjoining defendant from exercising the functions of office of Delegate to Congress and receiving pay therefor.

5th. That the complaint does not state facts sufficient to constitute a cause of action.

ARTHUR BROWN,
Atty for Deft.

TERRITORY OF UTAH, }
COUNTY OF SALT LAKE, } ss.

Arthur Brown being duly sworn, says: I am the attorney of the defendant in this action. I know the matters contained in the foregoing demurrer. That it is not interposed for delay merely, but in good faith, and I believe it to be well taken.

ARTHUR BROWN.

Subscribed and sworn to before me, this 16th day of June, 1881.

O. J. AVERILL, *Clerk.*

By H. G. McMILLAN, *Deputy Clerk.*

Filed this 16th day of June, 1881.

In the District Court of the Third Judicial District of Utah, Salt Lake County.

THE UNITED STATES, *Ex. Rel.*, ALLEN G. CAMPBELL, *Plaintiff.*

vs.
GEORGE Q. CANNON, *Defendant.*

To Sutherland and McBride, Plaintiff's Attorneys; P. T. Van Zile, District Attorney, Attorneys for Plaintiff.

You will take notice that I shall move this Court, on Saturday, June

26th, 1881, at the opening of the Court on that day (at 9 a. m.), or as soon thereafter as counsel can be heard, that the injunction issued in this action be dissolved, and for such other and further relief as may be proper. This motion will be based on complaint and other papers on which the injunction was granted.

ARTHUR BROWN,
Atty for Deft.

June 22, 1881.

I hereby order that the time of service of this motion be shortened so that service on June 22nd, shall be sufficient for hearing the motion, June 26th.

Dated June 22 1881, at 9 a.m.

JOHN A. HUNTER, *District Judge.*

Filed for plaintiff, June 22, 1881.

TERRITORY OF UTAH,
COUNTY OF SALT LAKE, } ss.

In the District Court, Third Judicial District.

THE UNITED STATES, *Ex. Rel.*, ALLEN G. CAMPBELL, *Plaintiff*,
vs.
GEORGE Q. CANNON, *Defendant.*

The motion of defendant to dissolve the injunction issued herein against defendant having been argued against defendant, having been argued and submitted to the Court, and the Court having considered the same, and being now advised, sustains said motion, and it is ordered and adjudged that the injunction heretofore issued herein against the defendant be and the same is hereby dissolved.

July 18, 1881.

JOHN A. HUNTER, *Judge.*

TERRITORY OF UTAH,
COUNTY OF SALT LAKE, } ss.

I, O. J. Averill, Clerk of the Third Judicial District Court of Utah Territory, do hereby certify that the foregoing is a full, true and correct copy of the original order made and entered by said Court, July 18, 1881, in the above entitled action filed in my office.

Witness my hand and Seal of said Court, at Salt Lake City, this 22d day of November, A. D. 1881.

[SEAL.]

O. J. AVERILL, *Clerk.*

By H. G. McMILLAN, *Deputy Clerk.*

I.VII

In the District Court for the Third Judicial District of Utah Territory.

THE UNITED STATES on the relation of ALLEN G. CAMPBELL, *Plaintiff*,
vs.
GEORGE Q. CANNON, *Defendant*.

*Complaint to annul a certificate held by defendant and used by him as a
Certificate of Naturalization.*

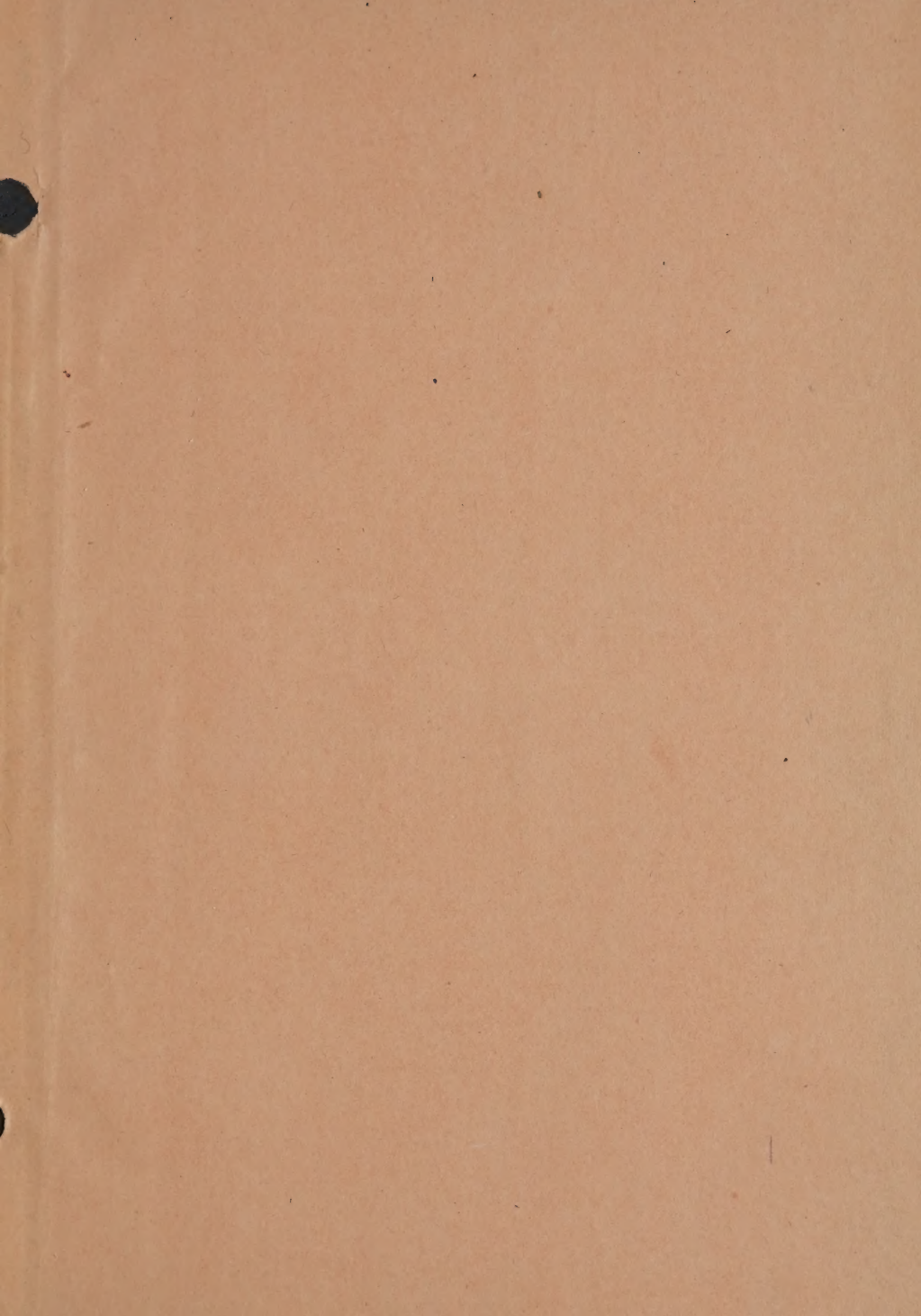
The demurrer of the defendant to the complaint filed in this action having been heretofore argued by counsel for the respective parties, and taken under advisement; and the court having duly considered the same; and it appearing to the court that the attorney general of the United States should file complaint in behalf of the government in such cases; and that from the facts stated in the complaint, which are admitted by defendant's demurrer, that there is no record of defendant's naturalization, and that no proceeding for that purpose ever took place in court, and that the certificate held by defendant as a certificate of naturalization was obtained by fraud and has been fraudulently used, and is void on its face in not professing to be the copy of a record and not certifying a regular naturalization, and therefore that there is no sufficient cause shown for annulling it, it is ordered that the said demurrer be and the same is hereby sustained, and that the complaint be, and is hereby dismissed.

Attest, October 31, 1881.

[SEAL.]

JOHN A. HUNTER, *Judge*.
H. G. McMILLAN, *Deputy Clerk*.

Filed October 31, 1881.



PATENTED
JAN. 21, 1904

UNIVERSITY OF ILLINOIS-URBANA



3 0112 051864285